

**EXHIBIT 3**

**to**

**PAUL D. BRACHMAN DECLARATION  
IN SUPPORT OF INTUITIVE'S MOTION FOR  
LIMITED SUPPLEMENTAL DISCOVERY**

# ATTACHMENT 49

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UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

SURGICAL INSTRUMENT SERVICE  
COMPANY, INC.,

Plaintiff / Counterclaim Defendant,

v.

Case No.: 3:21-cv-03496-VC

INTUITIVE SURGICAL, INC.,

Defendant / Counterclaim Plaintiff.

**Second Rebuttal Expert Report of Richard F. Bero, CPA, CVA**  
**March 1, 2023**

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## I. Introduction

### A. Assignment

I previously submitted an expert report dated December 2, 2022 (the “Bero Report”) and a rebuttal expert report dated January 18, 2023 (the “Bero Rebuttal Report”) in this matter.<sup>1</sup> In the Bero Report, I provided expert opinions on damages on behalf of Surgical Instrument Service Company, Inc. (“SIS”) in *Surgical Instrument Service Company, Inc. v. Intuitive Surgical, Inc.*, Case No. 3:21-cv-03496-VC.<sup>2</sup> As described in the Bero Report, I understand SIS has accused Intuitive Surgical, Inc. (“Intuitive” or the “Defendant”) of the following five counts: (1) Tying; (2) Exclusive Dealing; (3) Monopolization; (4) Attempted Monopolization; and (5) Unfair Trade Practices – Violation of Lanham Act.<sup>3</sup> I referred to these counts, collectively, as the “Alleged Wrongdoings.”

In the Bero Rebuttal Report, I addressed Intuitive’s claimed damages for its five counterclaims as contained in the Expert Report of Loren K. Smith, PH.D., dated December 2, 2022 (the “Smith Report”).<sup>4</sup>

On January 18, 2023, Loren K. Smith, PH.D., issued a rebuttal report which addressed my damages opinions as stated in the Bero Report (the “Smith Rebuttal Report”). I address and respond to the Smith Rebuttal Report herein.

As described in the Bero Report and Bero Rebuttal Report, I have not formed any legal opinions about this matter.

### B. Basis for my second rebuttal report

The basis for my opinions and information I relied on for damages issues related to Intuitive’s Alleged Wrongdoings and SIS’s Alleged Wrongdoings are set forth in the Bero Report and Bero Rebuttal Report, respectively.<sup>5</sup> I have now analyzed and considered the

<sup>1</sup> I also provided Updated Bero Report Schedules / Errata Sheet dated February 25, 2023, as described below.

<sup>2</sup> Compl. I described the parties, case facts and terminology in the Bero Report.

<sup>3</sup> Compl. ¶¶ 111-126.

<sup>4</sup> These counterclaims include: (1) Unfair competition and false advertising – Lanham Act 15 U.S.C. § 1125; (2) Unfair Competition Law – CA. Stat. § 17200; (3) False Advertising – CA. Stat. § 17500; (4) Common Law Unfair Competition; and (5) Tortious interference with contract (collectively, “Intuitive’s Counterclaims”). See Defendant Intuitive Surgical, Inc.’s Answer, Affirmative Defense and Counterclaims ¶¶ 84-109.

<sup>5</sup> Bero Report 4-6 and Bero Rebuttal Report 1-2.

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following additional information made available subsequent to the issuance of the Bero Rebuttal Report:

- the Smith Rebuttal Report and the Smith Rebuttal Report’s workpapers;
- additional documents produced / provided by the parties;
- additional expert reports;
- an additional deposition;
- additional discussions with the following SIS personnel (in alphabetical order):
  - Keith Johnson, Executive Vice President, Sales and Clinical Programs;
  - Greg Posdal, President and C.E.O.;
- discussions with Chris Gibson, Rebotix Repair LLC’s COO;
- additional independent research; and
- my skills, knowledge, professional background, education and work experience.

A detailed list of data and other information I have considered in developing this report and my two previous reports is included as **Second Rebuttal Attachment 1**. If additional relevant information becomes available after the issuance of this second rebuttal report, I reserve the right to incorporate such information as necessary. I may also incorporate additional information in response to any expert reports or opinions proffered on Intuitive’s behalf.

**C. Expert experience and compensation**

I am a certified public accountant, accredited in business valuation, a certified valuation analyst and the Managing Director of The BERO Group. Since 1987, I have analyzed economic damages and accounting and financial issues in a variety of litigation matters concerning areas such as breach of contract, patent infringement, trademark infringement, copyright infringement, trade secrets, anti-trust, dealership disputes and construction disputes. I have testified as an expert more than 170 times. My curriculum vitae, including a list of my testimonial experience in the last four years and publications in the last ten years, is included as **Second Rebuttal Attachment 2**.

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Compensation to The BERO Group for professional services provided in preparing this report is based on our customary hourly fees as described in the Bero Report. The BERO Group has no financial interest in the outcome of this litigation.

**D. Basic damages assumptions**

For purposes of this rebuttal report, I assume the parties’ (including third parties) reported revenue, costs and other data are generally accurate and reliable.<sup>6</sup>

**II. The Smith Rebuttal Report**

The Smith Rebuttal Report includes various criticisms of the Bero Report. Its primary criticism appears to be that the Bero Report’s inclusion of reset X/Xi EndoWrist instrument sales is speculative because no third-party companies have successfully developed a process to reset the use counter of X/Xi EndoWrist instruments.<sup>7</sup> The Smith Rebuttal Report states that excluding X/Xi EndoWrist sales reduces the Bero Report’s claimed revenue by at least 95%, which implies the Bero Report’s claimed damages are reduced by a similar amount.<sup>8</sup> I address this criticism first and other criticisms below.

Among other criticisms, the Smith Rebuttal Report claims my lost profits analysis in the Bero Report “suffers from conceptual and methodological flaws that inflate SIS’s purported damages.”<sup>9</sup> I address some of these claimed “conceptual and methodological flaws” and other criticisms herein. A lack of response to any of the Smith Rebuttal Report’s criticisms does not constitute an agreement with any such criticisms.

The Smith Rebuttal Report also identifies what it refers to as two computational errors in the Bero Report.<sup>10</sup> I have addressed those in my Updated Bero Report Schedules / Errata Sheet dated February 25, 2023. As such, I will not address those herein.

<sup>6</sup> If the parties’ reported information is incorrect, I reserve the right to update my analyses accordingly.

<sup>7</sup> Smith Rebuttal Report 12-14. As described in its footnote 15 on page 4, the Smith Rebuttal Report uses the word “reset” instead of “repair.”

<sup>8</sup> Smith Rebuttal Report 14 and Table 1.

<sup>9</sup> Smith Rebuttal Report 8.

<sup>10</sup> Smith Rebuttal Report 16-17.

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**III. The Bero Report’s inclusion of damages associated with the X/Xi EndoWrist instruments is assumed, and appears reasonable based on the evidence in the case**

The Smith Rebuttal Report states:<sup>11</sup>

Mr. Bero’s inclusion of sales of reset X/Xi EndoWrist instruments is speculative because, as of the date of this Report, none of the third-party companies has successfully developed a process to reset the use counter of X/Xi EndoWrist instruments.

Based on my experience, damages experts often rely on assumptions for areas outside their expertise. The Bero Report clearly notes it assumes SIS (relying on either Rebotix, Restore or another third-party technology provider) would have been able to reset the X/Xi EndoWrist instruments by various dates, and SIS, Rebotix or Restore would have been able to repair X/Xi EndoWrist instruments as of various dates.<sup>12</sup> The Smith Rebuttal Report ignores this.

The Smith Rebuttal Report also ignores Intuitive’s anti-competitive conduct and how it has affected the ability of third-parties to successfully develop a process to reset the use counter of X/Xi EndoWrist instruments. For example, Rebotix thought about repairing X/Xi EndoWrists as early as 2017.<sup>13</sup> However, Rebotix’s ability to finance the X/Xi repair business was significantly impacted by Intuitive’s actions, which limited its S/Si sales.<sup>14</sup> But-for Intuitive’s conduct, (assuming encryption was illegal) Rebotix believes it could have begun repairing X/Xi EndoWrists as early as 2019.<sup>15</sup>

Similarly, Restore began work on its X/Xi chips in approximately 2020,<sup>16</sup> although its efforts were delayed by Intuitive’s anti-competitive conduct.<sup>17</sup> Restore began funding its X/Xi reverse engineering efforts in late June 2022,<sup>18</sup> and based on its progress as of November 2022, Restore anticipated it will have the technical ability to reset the Xi EndoWrist use counter in “the third and fourth quarter, 2023.”<sup>19</sup> This means it will likely take Restore a little more than 1 year

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<sup>11</sup> Smith Rebuttal Report 12.

<sup>12</sup> Bero Report 5. Based on SIS’s relationships with Rebotix / Restore prior to the Alleged Wrongdoings and discussion with Kurt Humphrey, SIS’s technical expert.

<sup>13</sup> Bero Report 30. Deposition of Stan Hamilton 15 (November 4, 2022).

<sup>14</sup> Bero Report 30. Deposition of Stan Hamilton 11-12 and 42-44 (November 4, 2022). Discussion with Chris Gibson.

<sup>15</sup> Bero Report 30. Deposition of Stan Hamilton 15 (November 4, 2022). Discussion with Chris Gibson.

<sup>16</sup> Bero Report 32. Deposition of Kevin May 117-118 (November 3, 2022).

<sup>17</sup> Bero Report 32. Deposition of Kevin May 75-76 (November 3, 2022).

<sup>18</sup> Bero Report 32. Deposition of Kevin May 40 (November 3, 2022). May Dep. Ex. 155 (Restore-00091199-206 at 199).

<sup>19</sup> Bero Report 32. Deposition of Kevin May 60-61 (November 3, 2022).

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to have a marketable X/Xi. [REDACTED]  
[REDACTED]  
[REDACTED]

#### **IV. The Bero Report properly analyzed the “but-for” market**

The Smith Rebuttal Report states:<sup>21</sup>

A fundamental problem with Mr. Bero’s analysis is that he fails to consider Intuitive’s likely response to SIS’s (and any third party’s) activity in a “but-for” world where Intuitive is unable to sell the da Vinci System as an integrated product. In particular, Mr. Bero does not appear to consider the economic logic that if a firm is not free to maintain quality control and foster investment through contractual restrictions, it likely will try to achieve similar goals in less efficient ways. For example, if Intuitive were not free to protect the safety and welfare of patients, and by extension Intuitive’s reputation and financial viability, through contractual provisions, a rational response would be to change its pricing strategy to achieve as much system integration as possible (e.g., by increasing its prices for da Vinci platforms and lowering its prices for EndoWrist instruments). If Intuitive were to change its strategy to achieve a higher level of system integration in the relevant “but-for” world, it is likely that fewer customers would choose SIS’s reset EndoWrist instruments over Intuitive’s instruments than Mr. Bero assumes. [emphasis added]

##### **A. The Smith Rebuttal Report speculates Intuitive would hypothetically increase da Vinci Surgical System pricing and lower EndoWrist instrument pricing.**

The Smith Rebuttal Report provides no apparent Intuitive support or basis for this criticism. It does not cite to any Intuitive information suggesting it contemplated increasing daVinci Surgical System pricing or decreasing EndoWrist instrument pricing due to secondary market competition. Instead, it simply offers this “for example” hypothetical Intuitive response.

The Smith Report provides no support for how much Intuitive’s prices would change and whether Intuitive’s customers would be willing to pay more for da Vinci Surgical Systems. I am

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<sup>20</sup> Bero Report 32. Based on discussion with Kurt Humphrey. Also, discussion with Chris Gibson.

<sup>21</sup> Smith Rebuttal Report 10.

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not aware of any Intuitive documents that suggest Intuitive would have or reasonably could have changed its da Vinci Surgical System pricing, or how any pricing change would affect demand.

I am also not aware this was an action Intuitive considered or the consequences of taking such an action. This hypothetical also appears to run opposite to the only Intuitive document the Smith Rebuttal Report cites in its criticism, from October 1995, which states: “systems will be placed for little or no charge at sites that sign an annual minimum disposables and [Reposable Transmission Unit] purchase contract.”<sup>22</sup>

**B. The Smith Rebuttal Report’s hypothetical Intuitive pricing approach is not consistent with Intuitive’s contemplated actions**

The Smith Rebuttal Report also ignores Intuitive’s documents which suggest its actual or contemplated response actions. For example, in a document titled “Unauthorized Instrument Reprogramming Overview,” Intuitive’s response includes “Trend Analysis, Educate Account, Customer Letter and Terminate Service.”<sup>23</sup> It makes no mention of pricing changes. Instead, this document appears to describe each action from monitoring to see if there is a trend at the customer site for use of repaired instruments to terminating a customer’s sales and service agreement.<sup>24</sup> Another Intuitive document titled “Instrument Refurbishment Update” suggests similar actions in addition to “technical opportunities to prevent reprogramming” and “advancing internal programs,”<sup>25</sup> which were apparently never pursued.

**C. The Smith Rebuttal Report’s hypothetical Intuitive pricing approach fails to account for Intuitive’s identified secondary market benefits.**

Another document titled “Secondary Markets” suggests Intuitive and its customers could actually benefit from secondary markets and “Increase da Vinci adoption and customer satisfaction.”<sup>26</sup> As described in the Bero Report, Intuitive contemplated what it referred to as “Project Dragon.”<sup>27</sup> Intuitive described Project Dragon as “an opportunity for our customers to have improved running costs associated with procedures. We believe a reduction in running cost

<sup>22</sup> Smith Rebuttal Report 10, FN 26. Intuitive-00595673-694 at 682-683.

<sup>23</sup> Intuitive-00089767-782 at 771.

<sup>24</sup> Intuitive-00089767-782 at 771.

<sup>25</sup> Intuitive-00147262-271 at 264.

<sup>26</sup> Intuitive-00273300-330 at 301.

<sup>27</sup> Intuitive-00273300-330 at 303. Bero Report 28-29.

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would grow or accelerate our growth in procedures.”<sup>28</sup> However, I understand Project Dragon (and similar programs) were abandoned by Intuitive.<sup>29</sup> To the extent “running costs” were reduced, the referenced Project Dragon document suggests Intuitive believed it could have potentially sold more instruments than it otherwise did.

The Smith Rebuttal Report does not address or account for the impact or potential Intuitive benefits from secondary markets.

**V. The Bero Report conservatively considered SIS costs associated with not owning “intellectual property”**

The Smith Rebuttal Report criticizes the Bero Report for “potential costs” based on SIS continuing to offer its services, stating:<sup>30</sup>

Setting aside Intuitive’s potential change in pricing strategy (as opposed to Mr. Bero’s implicit assumption Intuitive’s behavior would remain unchanged), Mr. Bero’s analysis does not reflect potential costs stemming from the fact that SIS does not own the “intellectual property” associated with resetting EndoWrist instruments, particularly the chip that would be inserted into the instrument. In his “in-house repair model,” Mr. Bero assumes that SIS would purchase the chip from Restore Robotics LLC (“Restore”) and/or Rebotix Repairs LLC (“Rebotix”). In his “distributor model,” Mr. Bero assumes that SIS would pay Restore and/or Rebotix for “repair services” that encompass the chip and labor entailed in resetting the EndoWrist instrument. [emphasis added]

The Bero Report properly (and conservatively) considered SIS’s costs. In response to the Smith Rebuttal Report’s criticism, I spoke with Chris Gibson (“Mr. Gibson”), Rebotix Repair LLC’s COO. Mr. Gibson addressed a number of topics associated with Rebotix and SIS’s relationships, SIS’s costs, and the history between the two companies. Mr. Gibson confirmed a number of items addressed in the Bero Report and also clarified that Rebotix’s sales prices to SIS under both SIS’s In-house model and SIS’s Distributor model would have been lower than calculated in the Bero Report. In effect, rather than understating SIS’s costs as suggested by the

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<sup>28</sup> Intuitive-00103407-00103426 at 409.

<sup>29</sup> Morales 30(b)(6) Dep. Ex. 143 (Intuitive-00626597-626616 at 598). Bero Report 29.

<sup>30</sup> Smith Rebuttal Report 10-11.

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Smith Rebuttal Report, the Bero Report conservatively overestimated SIS’s costs (and understated lost profits). Mr. Gibson confirmed and/or provided the following information:<sup>31</sup>

- Rebotix stopped working with Restore because Restore wasn’t doing the volume Rebotix expected them to have.<sup>32</sup> Rebotix set Restore up initially as a Service Center (akin to what it was going to do with SIS).
- Rebotix was interested in SIS due to its extensive customer relationships including, for example, Vizient, Inc. (“Vizient”), the largest GPO in the U.S., and Banner. Rebotix had a few direct end user relationships, however, expanding direct customer relationships was not Rebotix’s primary business model. SIS had many direct customer relationships and provided Rebotix with an ideal business partner.
- Rebotix and SIS had a strong relationship. They had an initial verbal understanding consistent with the August 22, 2019 Draft Service Center Agreement.<sup>33</sup>
- Rebotix’s goal was to have a long-term relationship with SIS due to its national customer accounts.<sup>34</sup> Rebotix anticipated a long-term relationship supplying Interceptor chips to SIS (or, as necessary, providing repair services).<sup>35</sup>
- The intended relationship all along was for SIS to provide the repairs and purchase the Interceptor chips from Rebotix (the “In-house model” described in the Bero Report). Rebotix planned to assist SIS in setting up the repair work, with the expectation that SIS would perform the repair work (i.e., the In-house model) and Rebotix could support repair work if necessary.<sup>36</sup>
- Rebotix would not have licensed just its intellectual property alone to SIS or others but would have required SIS to purchase the Interceptor chip.

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<sup>31</sup> The following is based on discussion with Mr. Gibson. Other sources are included for certain items.

<sup>32</sup> See also, e.g., Bero Report 12.

<sup>33</sup> Gibson Dep. Ex. 13 (REBOTIX061127-138).

<sup>34</sup> See also, e.g., Bero Report 11, 30.

<sup>35</sup> See also, e.g., Bero Report 11, 30.

<sup>36</sup> See also, e.g., Bero Report 11, 27, 29.

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- The market was excited about a third party EndoWrist (repair) supplier and there was high market demand.<sup>37</sup>
- 50,000 annual SIS EndoWrist repairs annually is a low estimate.<sup>38</sup>
- Rebotix “easily” had the capacity to supply 50,000 annual Interceptor chips.<sup>39</sup>
- Rebotix “easily” had the capacity to supply 50,000 annual EndoWrist instrument repairs.<sup>40</sup>
- EndoWrist repairs (or servicing) was low cost, easily trainable, straightforward and less complicated than other instrument repairs.<sup>41</sup>
- Rebotix and SIS both anticipated volume discounts.<sup>42</sup>
- Volume discounts for thousands of annual units would have been greater than the \$450 Interceptor chip or repair discounts shown in the Draft January 24, 2020 Memorandum of Understanding (“Draft MOU”).<sup>43</sup>
- The \$450 volume discount per Interceptor chip identified on the Draft MOU would have applied to the \$800 “not to exceed” price identified on the August 22, 2019 draft Service Center Agreement.<sup>44</sup>
- In order to achieve the \$450 or more volume discount on Interceptor chips and/or repairs, Rebotix would have expected volumes of thousands of units annually.

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<sup>37</sup> See also, e.g., Bero Report 44.

<sup>38</sup> See also, e.g., Bero Report **Schedules 2.0 and 3.0**.

<sup>39</sup> See also, e.g., Bero Report 5, 45.

<sup>40</sup> See also, e.g., Bero Report 45.

<sup>41</sup> See also, e.g., Bero Report 27, 45.

<sup>42</sup> See also, e.g., Bero Report 11, 30.

<sup>43</sup> Gibson Dep. Ex. 14 (REBOTIX067735-737). I understand Mr. Gibson testified in his deposition that Rebotix never would have agreed to the Draft MOU (Deposition of Chris Gibson 164-167 (June 22, 2021) (*Rebotix Repair LLC v. Intuitive Surgical, Inc.*, No. 8:20-cv-02274-VMC-TGW (M.D. Fla. filed Sept. 28, 2020)). Based on discussion with Chris Gibson, this is due to two issues. First, and primarily, Rebotix was intent on protecting its Intellectual Property. It would not have licensed its Intellectual Property to SIS after SIS purchased just 300 units. Second, the volume discounts shown appear to have been based on cumulative total combined Interceptor and repair units. Rebotix would not have agreed to a \$450 volume discount after having sold just 300 combined Interceptor and repair units. However, to the extent SIS purchased 300 Interceptor chips (and/or repairs) per order or SIS purchased thousands of Interceptor chips (and/or repairs) annually, Rebotix would have agreed to the \$450 volume discount or more.

<sup>44</sup> See also, e.g., Bero Report 11. Gibson Dep. Ex. 13 (REBOTIX061127-138) and Gibson Dep. Ex. 14 (REBOTIX067735-737).

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- The Interceptor chip prices (i.e., SIS costs) would have been, at most, the net \$350 cost (i.e., \$800 less the \$450 volume discount).<sup>45</sup>
- Rebotix’s Interceptor chip prices (net of volume discounts) would have likely been less than \$350 per chip to SIS. They would have likely been \$200 to \$300 per unit at SIS purchase volumes approaching 50,000 annual units (i.e., Interceptor chips and/or repairs combined). The corresponding volume discounts would have been \$500 to \$600 (i.e., \$800 less \$600 volume discount = \$200 Interceptor chip price to SIS).
- While the intention was for SIS to provide repair services (rather than Rebotix), Rebotix repair prices would have similarly been discounted to SIS for volume (i.e., Distributor model). Volume discounts would have applied to the distributor price lists.<sup>46</sup>
- Rebotix repair prices would have been volume discounted for at least as much as the \$450 volume discount per repair identified on the Draft MOU.<sup>47</sup>
- Rebotix’s repair prices (i.e., SIS costs) net of the \$450 per unit volume discount equates to approximately \$590 over time and is reasonable.<sup>48</sup>
- Technicians could achieve a minimum of 10 to 15 repairs per 8-hour shift with no support, and 20 to 25 repairs per 8-hour shift with clerical administrative support.<sup>49</sup>

<sup>45</sup> **Second Rebuttal Schedule 10.0.** This Rebotix price (i.e., SIS’s cost) is significantly less than the conservative \$533 Interceptor prices (i.e., SIS’s costs) used in the Bero Report. See also **Second Rebuttal Schedules 2.1, 4.1 and 4.4.**

<sup>46</sup> SIS000047-49. REBOTIX162208-162212 at 212.

<sup>47</sup> Gibson Dep. Ex. 14 (REBOTIX067735-737). I understand Mr. Gibson testified in his deposition that Rebotix never would have agreed to the Draft MOU (Deposition of Chris Gibson 164-167 (June 22, 2021) (*Rebotix Repair LLC v. Intuitive Surgical, Inc.*, No. 8:20-cv-02274-VMC-TGW (M.D. Fla. filed Sept. 28, 2020))). Based on discussion with Chris Gibson, this is due to two issues. First, and primarily, Rebotix was intent on protecting its Intellectual Property. It would not have licensed its Intellectual Property to SIS after SIS purchased just 300 units. Second, the volume discounts shown appear to have been based on cumulative total combined Interceptor and repair units. Rebotix would not have agreed to a \$450 volume discount after having sold just 300 combined Interceptor and repair units. However, to the extent SIS purchased 300 Interceptor chips (and/or repairs) per order or SIS purchased thousands of Interceptor chips (and/or repairs) annually, Rebotix would have agreed to the \$450 volume discount or more. SIS000047-49. REBOTIX162208-162212 at 212. Second Rebuttal Report **Schedules 12.0 and 12.1.**

<sup>48</sup> **Second Rebuttal Schedules 3.1, 5.1 and 5.3.** Note this Rebotix price (i.e., SIS’s cost) is significantly less than the conservative approximate \$1,040 Interceptor prices (i.e., SIS’s costs) without any discounts used in the Bero Report. See Bero Report **Schedules 3.1, 5.1 and 5.3.**

<sup>49</sup> See also, e.g., Bero Report 45.

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- Rebotix put its X/Xi Interceptor chip development on hold due to Intuitive’s market disruptions. It stopped development for approximately two years.
- Assuming the X/Xi encryption had not changed from the S/Si, Rebotix had the expectation (without Intuitive’s market disruptions) to be able to provide Interceptor chips (and/or repair services) for the X/Xi by sometime in 2019.<sup>50</sup>
- Assuming the X/Xi encryption was legal (i.e., changed as it was from the S/Si), Rebotix likely would have otherwise (without Intuitive’s market disruptions) reasonably been able to provide Interceptor chips (and/or repair services) for the X/Xi EndoWrist instruments by January 1, 2021.<sup>51</sup>

**A. Incorporating SIS’s costs based on Rebotix’s expected selling prices to SIS results in higher lost profits as shown on Second Rebuttal Schedule 1.0.**

Accounting for the expected Rebotix prices (i.e., SIS’s costs) and volume discounts results in higher SIS lost profits. Accordingly, I have updated my lost profits calculations based on these lower SIS costs.

For the In-house model, I use the \$350 (i.e., \$800 less \$450 volume discount) Interceptor price (i.e., SIS’s cost) per unit rather than the initial conservative \$533 cost as addressed above. As noted, at higher volumes, the Interceptor price (i.e., SIS’s costs) would have likely been lower, at approximately \$200 to \$300 per unit. Again, this In-house model was the intended and planned for relationship between Rebotix and SIS.

For the Distributor model, I use the approximate \$590 (i.e., approximately \$1,040 less \$450 discount) repair service price (i.e., SIS’s cost) per unit rather than the initial conservative approximate \$1,040 costs as addressed above. **Table 1** below shows my updated damages summary.<sup>52</sup>

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<sup>50</sup> See also, e.g., Bero Report 5, 30, 46.

<sup>51</sup> See also, e.g., Bero Report 5, 31-32, 57-58.

<sup>52</sup> **Second Rebuttal Schedule 1.0.**

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**Table 1: Damages Summary**

	Scenario 1		Scenario 2		
<b><u>Discounted lost profits</u></b>					
In-house model	\$131,382,634		\$71,856,681	to	\$103,159,956
Distributor model	\$116,476,660		\$63,572,049	to	\$91,324,868
<b>Lanham Act</b>		\$258,367,896	to	\$371,219,363	

## VI. The Bero Report properly considered SIS’s relationships with Rebotix (and Restore)

The Smith Rebuttal Report states:<sup>53</sup>

The fact that SIS does not own any “intellectual property” could impact Mr. Bero’s analysis in multiple ways. First, SIS faces risk that Rebotix or Restore could increase the amount they charge SIS for the chip/reset services, which would raise SIS’s costs and reduce profits. Second, Rebotix and/or Restore may license their “intellectual property” with additional distributors; this could limit SIS’s potential customers or introduce new competitors to SIS. Third, Rebotix and/or Restore could cut off SIS entirely from reset “services”; fluctuations in supply of the chips would also potentially harm SIS’s business in selling reset EndoWrist instruments. Although contracts or agreements may help to address these issues, I am not aware of an executed agreement between SIS and Rebotix or between SIS and Restore concerning reset “services.” [emphasis added]

### A. The Smith Rebuttal Report speculates on what Rebotix or Restore “could” or “may” have done.

This critique includes hypotheticals about what “could” or “may” have happened since SIS does not own any intellectual property related to EndoWrist repair. These hypotheticals are speculative and unsupported. They are also inconsistent with at least SIS’s relationship with Rebotix.

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<sup>53</sup> Smith Rebuttal Report 11-12.

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**B. The Smith Rebuttal Report fails to account for SIS’s vendor/customer relationships.**

The August 22, 2019 Draft Service Center Agreement specifically defines SIS as being “engaged in the sale and marketing or medical products.”<sup>54</sup> As noted above, Rebotix was interested in SIS due to its extensive customer relationships including, for example, Vizient and Banner.<sup>55</sup> The Smith Rebuttal Report fails to account for SIS’s relationships.

The Smith Rebuttal Report ignores that SIS hosted a February 2020 repairs meeting at its Glendale Heights facility<sup>56</sup> that was attended by multiple representatives of a large hospital system with tens of millions of dollars in annual EndoWrist costs.<sup>57</sup> The attendees discussed SIS performing repairs of EndoWrists, i.e., with third parties such as Rebotix providing the updated chip and SIS performing the underlying repairs at its facilities.<sup>58</sup>

The Smith Rebuttal Report further ignores that SIS and Vizient, the largest GPO in the U.S., had a relationship dating back to at least 2016, when the parties signed a Supplier Services Agreement for instrument repairs that was effective September 1, 2016.<sup>59</sup> In September 2019, SIS and Vizient signed an Agreement Amendment specific to EndoWrist repairs.<sup>60</sup> This Amended Agreement addressed SIS’s intention to repair EndoWrist products, and was for 38 EndoWrist products.<sup>61</sup> The timing of this Amended Agreement also coincided with Vizient’s interest in SIS’s EndoWrist repair business and the meetings it helped set up with its members.<sup>62</sup> I understand SIS had the customers and relationships Rebotix and Restore desired, including access to Vizient.<sup>63</sup> As described in the Bero Report, Rebotix had stopped working with ReStore because Restore wasn’t doing the volume Rebotix expected them to have.<sup>64</sup>

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<sup>54</sup> REBOTIX061127-138 at 128.

<sup>55</sup> Discussion with Chris Gibson.

<sup>56</sup> Bero Report 27. Plaintiff’s Response to Intuitive’s Interrogatory No. 5 (August 8, 2022).

<sup>57</sup> Bero Report 27. Plaintiff’s Response to Intuitive’s Interrogatory No. 5 (August 8, 2022).

<sup>58</sup> Bero Report 27. Plaintiff’s Response to Intuitive’s Interrogatory No. 5 (August 8, 2022).

<sup>59</sup> Bero Report 33-34. SIS330591-330634.

<sup>60</sup> Bero Report 34. SIS0000047-0000049.

<sup>61</sup> Bero Report 34. SIS0000047-0000049. Discussion with Keith Johnson.

<sup>62</sup> Bero Report 34. Discussion with Keith Johnson.

<sup>63</sup> Discussion with Keith Johnson.

<sup>64</sup> Bero Report 12. Deposition of Chris Gibson 145-146 (June 22, 2021) (*Rebotix Repair LLC v. Intuitive Surgical, Inc.*, No. 8:20-cv-02274-VMC-TGW (M.D. Fla. filed Sept. 28, 2020)). Also, discussions with Keith Johnson and Chris Gibson.

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**C. Rebotix’s goal was a long-term relationship with SIS due to its national customer accounts**

Rebotix had no intention to ‘cut off’ or license its intellectual property to others.<sup>65</sup>

Rather, Rebotix’s goal was to have a long-term relationship with SIS due to its national customer accounts.<sup>66</sup> Rebotix anticipated a long-term relationship supplying Interceptor chips to SIS (or, as necessary, providing repair services).<sup>67</sup>

**VII. The Bero Report’s market penetration rate is reasonable and appropriate**

The Smith Rebuttal Report states:<sup>68</sup>

Mr. Bero’s final “market penetration” rate (i.e., SIS’s share of total sales of S/Si and X/Xi EndoWrist instruments eligible for reset “services”) is 2 to 12 percent. Mr. Bero compares his “market penetration” rates with three “benchmarks,” claiming they show that his rates “appear [] reasonable relative to other available data.

**A. The Smith Rebuttal Report seems to (misleadingly) suggest the Bero Report’s penetration rates (i.e., 2% to 12%) are reliant on three purported “benchmarks”**

The Bero Report details the many factors and facts accounted for in projecting the 2% to 12% penetration rates (2% in 2020, 8% in 2021 and 12% in 2022).<sup>69</sup> Those factors include EndoWrist instruments potentially repairable by SIS, the expiration rate of EndoWrist instruments, market share access (based solely on Vizient market share and not including any of SIS’s other customers or potential customers), the conversion rate of Vizient customers to sign up for the program, the collection rate of converted customers to use the SIS repair program, and the yield rate of collected EndoWrist instruments to be repairable.<sup>70</sup>

The analysis results in SIS repairing an estimated approximate 8,000 EndoWrist instruments in 2020 and up to a maximum of approximately 47,000 EndoWrist instruments in 2023.<sup>71</sup> As described above, according to Chris Gibson, this estimate is low.<sup>72</sup>

<sup>65</sup> Discussion with Chris Gibson.

<sup>66</sup> Discussion with Chris Gibson.

<sup>67</sup> Discussion with Chris Gibson.

<sup>68</sup> Smith Rebuttal Report 19.

<sup>69</sup> See, e.g., Bero Report 47-52.

<sup>70</sup> See, e.g., Bero Report 47-52.

<sup>71</sup> Bero Report **Schedules 2.0 and 3.0**.

<sup>72</sup> Discussion with Chris Gibson.

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The Bero Report compared the penetration rates (i.e., 2% to 12%) developed and underlying the approximate 8,000 to 47,000 annual units to other available comparative data. There were three known sources. The Smith Rebuttal Report refers to these as “benchmarks” implying the Bero Report is reliant on these three comparisons.<sup>73</sup> It is not. The Bero Report explicitly lays out the analysis as addressed on pages 47-52 (and noted above) accounting for the numerous relevant factors. The Bero Report simply notes the estimated penetration rates (i.e., 2% to 12%) appear reasonable relative to the other available data.

**B. The Bero Report’s 2% to 12% penetration rates appear reasonable relative to Intuitive’s August 2019 estimated 41% to 50% penetration rate**

The Smith Rebuttal Report states:<sup>74</sup>

The first of Mr. Bero’s “benchmarks” comes from a 2019 Intuitive presentation that considers “potential Xi refurbishment and estimated penetration of approximately 41 percent or 50 percent.” However, Mr. Bero’s reliance on Intuitive’s internal projections to estimate SIS’s “market penetration” rate for the never-initiated instrument refurbishment service is inappropriate for three reasons. He ignores critical components of Intuitive’s calculation: Intuitive’s status as the original equipment manufacturer, and whether Intuitive’s instrument refurbishment procedure was more robust than SIS’s procedure to reset the use counter. First, customers likely would prefer to have the original equipment manufacturer, Intuitive, refurbish an EndoWrist instrument (which Intuitive designed, developed, and manufactured) rather than a third party. Second, Intuitive’s assessment of “[Instrument] Refurbishment Feasibility” contemplated that Intuitive would replace significant portions of the instruments (including the cables, inputs and flush tube) to “survive [additional] lives.” SIS, on the other hand, does not replace any instrument components. Hence, Intuitive’s internal projections of a “penetration rate” are likely to be higher than that which SIS could achieve because SIS does not have Intuitive’s reputation or status as the original equipment manufacturer, nor does SIS replace instrument components. [emphasis added]

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<sup>73</sup> Smith Rebuttal Report 19-24.

<sup>74</sup> Smith Rebuttal Report 20-21.

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Despite the Smith Rebuttal Report’s reference to differences between Intuitive and SIS, the fact remains the Bero Report’s estimated penetration rates are a fraction of Intuitive’s estimated 41% to 50% penetration rates.

**C. The Bero Report’s 2% to 12% penetration rates appear reasonable relative to Stryker’s 8.5% to 9% expected penetration rates**

The Smith Rebuttal Report states:<sup>75</sup>

Regarding the penetration rate in the Stryker models, Mr. Bero offers little discussion as to the extent to which Stryker’s forecasts are reliable proxies for SIS, which does not own the “intellectual property” behind the process to reset the use counters for S/Si EndoWrist instruments, or for the period after 2019. Mr. Bero also does not explain why the discussions between Stryker and Rebotix LLC dissolved, and comments in the models suggest that the models would be subject to change with additional information. Stryker abandoned the contemplated transaction for a company separate from SIS, and the forecasts were developed over five years ago in 2016. Hence, the assumptions of the Stryker financial models are unreliable as “benchmarks” for Mr. Bero’s damages analysis. [emphasis added]

The Smith Rebuttal Report appears to (misleadingly) suggest the Bero Report’s penetration rate analysis is somehow based on the Stryker penetration rates. It is not.

As described in the Bero Report, in 2016, Rebotix and Stryker had discussions about Stryker purchasing Rebotix.<sup>76</sup> I understand Stryker ultimately stopped pursuing an acquisition of Rebotix because of a legal opinion that had nothing to do with Rebotix’s technology.<sup>77</sup> In 2020, I understand Stryker again considered working with Rebotix on EndoWrists, but ultimately stopped pursuing it because of Covid-19.<sup>78</sup>

Regardless, the 8.5% to 9% Stryker penetration rates are reasonably comparable to the Bero Report’s 2% to 12% penetration rates.

<sup>75</sup> Smith Rebuttal Report 21-22.

<sup>76</sup> Bero Report 53. Deposition of Stan Hamilton 35-39 and 126 (June 4, 2021) (*Rebotix Repair LLC v. Intuitive Surgical, Inc.*, No. 8:20-cv-02274-VMC-TGW (M.D. Fla. filed Sept. 28, 2020)).

<sup>77</sup> Deposition of Stan Hamilton 48 (June 4, 2021) (*Rebotix Repair LLC v. Intuitive Surgical, Inc.*, No. 8:20-cv-02274-VMC-TGW (M.D. Fla. filed Sept. 28, 2020)).

<sup>78</sup> Deposition of David Fabricant 109-114 (November 8, 2022).

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**D. The Bero Report’s 2% to 12% penetration rates appear reasonable relative to Deutsche Bank’s 4% to 6% penetration rates**

The Smith Rebuttal Report states:<sup>79</sup>

Regarding the penetration rate in the Deutsche Bank analyst report, the report offers no specific sources for its assumptions: the “4 to 6 percent capture rate” proposed by the report was apparently based on “conversations with surgeon and hospital customers.” Citing to the report’s claim that “each instrument could be repaired three times,” Mr. Bero notes that the penetration rate would be three times higher (12 to 18 percent). In fact, one of Mr. Bero’s own citations contradicts the “three repairs per instrument” assumption: in a 2019 Intuitive internal presentation that Mr. Bero references, Intuitive assumes for its own modeling that “Xi instruments can only be refurbished once.” Rebotix’s own purported testing of the number of uses for EndoWrist instruments has not exceeded 29 uses, which would translate to two resets. Additionally, Iconocare’s 510(k) clearance for resetting Si EndoWrists—the only clearance for resetting I am aware of—is limited to one reset. As with his second “benchmark”, Mr. Bero’s third “benchmark” lacks reliable support. [emphasis added]

The Smith Rebuttal Report appears to (again misleadingly) suggest the Bero Report’s penetration rate analysis is somehow based on the Deutsche Bank penetration rates. It is not.

Regardless, the Desutsche Bank’s 4% to 6% penetration rates are reasonably comparable to the Bero Report’s 2% to 12% penetration rates. If the Bero Report incorporated an assumption EndoWrist’s could be reset more than once, the Bero Report’s penetration rates would, if anything, have been higher.

**E. The Smith Rebuttal Report’s reference to Vizient, if anything, highlights the Bero Report’s conservative penetration rates**

The Smith Rebuttal Report states:<sup>80</sup>

In Mr. Bero’s “but-for” world, SIS would capture at most 11.6 percent of the total market for resettable EndoWrist instruments although SIS only provides “service” to hospitals in Vizient’s network. For Mr. Bero’s estimate of SIS’s “market penetration” rate to be in line with his “benchmarks” (as Mr. Bero asserts), there

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<sup>79</sup> Smith Rebuttal Report 22-23.

<sup>80</sup> Smith Rebuttal Report 23-24.

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would have to be little to no sales of reset EndoWrist instruments outside of SIS’s sales to hospitals in Vizient’s network. If SIS itself can achieve an overall “market penetration” rate of 11.6 percent when it has access to only 55 percent of resettable EndoWrist instruments, then— under the assumption that the number of reset EndoWrist units per hospital is the same among Vizient and non-Vizient hospitals—the overall “market penetration” rate would be equal to SIS’s assumed “penetration rate” within Vizient hospitals—21.2 percent. This value is higher than even the upper end of the estimate in the Deutsche Bank report assuming three resets per instrument (12 percent to 18 percent) and more than double the upper end of Stryker’s estimate (8.5 to 9.0 percent). [emphasis added]

If anything, this highlights the conservative nature of the Bero Report’s penetration rates.

The Bero Report’s analysis does not include non-Vizient customers.<sup>81</sup> Vizient represents a 55% market share.<sup>82</sup> GPO’s and hospital systems’ interest in SIS’s repair program was “monumental.”<sup>83</sup> SIS had also presented and generated interest with hospital systems beyond Vizient healthcare providers.<sup>84</sup> As the Smith Rebuttal Report notes, including non-Vizient hospitals would have resulted in an overall market penetration of 21.2%.<sup>85</sup>

To the extent non-Vizient hospital / customers were included in the Bero Report’s analysis, the penetration rates would have been higher resulting in higher lost profits.

#### F. The Bero Report’s 60% expiration rate is reasonable

The Smith Rebuttal Report criticizes the Bero Report’s use of 60% expiration rate, suggesting a lower (unexplained) 50% rate.<sup>86</sup> The Smith Rebuttal Report states:<sup>87</sup>

By focusing on the “top 5” X/Xi instruments to calculate his expiration rate and applying that rate across all EndoWrist instruments in his analysis, Mr. Bero uses an aggressive expiration rate that inflates his damages estimate when a more appropriate alternative is available within the source that he relies on. Mr. Bero acknowledges that the “Top 5” instruments account for a disproportionately high share of expired core instruments. To the

<sup>81</sup> Bero Report 49-50.

<sup>82</sup> Bero Report 49-50.

<sup>83</sup> Bero Report 24. Also, for example, discussion with Chris Gibson.

<sup>84</sup> Bero Report 23-25, 50

<sup>85</sup> Smith Rebuttal Report 23.

<sup>86</sup> Smith Rebuttal Report 25.

<sup>87</sup> Smith Rebuttal Report 25.

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extent that the “Top 5” instruments are used more frequently than other EndoWrist instruments, one may expect that the expiration rate for these instruments would be relatively higher than the overall expiration rate across all instruments. Indeed, when I calculate the expiration rate of X/Xi core instruments (not exclusive to the “top 5”) using Mr. Bero’s methodology, I find that the expiration rate would be 50 percent instead of 60 percent. [emphasis added]

Using a 60% expiration rate is reasonable. As noted in the Bero Report, and as shown on Bero Report **Schedule 7.0**, the estimated expiration rate for the Top 5 instruments increased from approximately 60% in 2018 to approximately 74% in 2021. These Top 5 instruments are shown on Morales Dep. Exhibit 141 (Intuitive-00603992) and are repairable by SIS.<sup>88</sup> As also shown on Bero Report **Schedule 7.0**, the estimated expiration rates from 2018 through 2021 suggest an expiration rate higher than 60%.

To support its claim the expiration rate should be 50%, the Smith Rebuttal Report relies on its calculation of the expiration rate for the approximate 15 X/Xi “core” instruments.<sup>89</sup> However, the basis for this calculation is not clear. Morales Dep. Exhibit 141 (Intuitive-00603992) indicates approximately 105,000 and 143,000 expired “core” instruments in 2018 and 2019, respectively, for a total of approximately 248,000 expired “core” instruments. The Smith Rebuttal Report indicates it divided this approximate 248,000 expired “core” instrument units “by the number of Intuitive 2018-2019 sales of core instruments identified in the same exhibit.”<sup>90</sup>

My team and I have reviewed Morales Dep. Exhibit 141 (Intuitive-00603992) and the Smith Rebuttal Report’s identified workpapers and have been unable to determine where or how its 2018 and 2019 X/Xi total sales of expired “core” instrument was derived. One Smith Rebuttal Report workpaper indicates approximately 208,000 and 288,000 X/Xi “core” instruments were sold in 2018 and 2019, respectively, for a total of 496,000 in combined “core” instruments sold.<sup>91</sup> However, the underlying data appears to be inaccessible. The 2018 and 2019 unit sales of X/Xi “core” instruments the Smith Rebuttal Report appears to rely on are higher

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<sup>88</sup> SIS000047-49.

<sup>89</sup> Smith Rebuttal Report 25-26 and FN 84. *See also*, Morales Dep. 41-43.

<sup>90</sup> Smith Rebuttal Report 26 FN 84.

<sup>91</sup> Smith Rebuttal Report Workpaper “Bero Sensitivities” at tab “Core Instrument Expiration.”

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than Intuitive’s 2018 and 2019 unit sales of 189,000 and 266,000, respectively, for the relevant 38 instruments SIS can repair.<sup>92</sup>

The Smith Rebuttal Report does not identify what constitutes the approximate 15 X/Xi “core” instruments, Morales Dep. Exhibit 141 (Intuitive-00603992) does not appear to indicate or describe the 15 X/Xi “core” instruments and it is not apparent how many of these approximate 15 X/Xi “core” instruments SIS can repair.

**G. The Bero Report’s conversion rates of 15% in Year 1, 50% in Year 2, and 70% in Year 3 appear reasonable**

The Smith Rebuttal Report states:<sup>93</sup>

**Mr. Bero estimates that up to 70 percent of Vizient’s members will “convert” to SIS repair” services and relies on the expert opinions of Jean Sargent.** Ms. Sargent’s assessment is based on her industry “experience with Vizient and other GPOs,” and she does not cite to independent sources or present corroborating evidence to support her claim. [emphasis added]

The Smith Rebuttal Report makes no mention and provides no support for any alternative conversion rates. The Bero Report uses conversion rates of 15% in Year 1, 50% in Year 2 and 70% in Year 3.<sup>94</sup> Based on my experience, damage experts often rely on other experts for opinions and knowledge outside the damages expert’s area of expertise. The Bero Report clearly states it relies on SIS’s industry expert, Jean Sargent, for the conversion rates.<sup>95</sup> The 70% is also consistent with the testimony of Restore’s CEO, who testified he expected "70 to 80 plus percent" of hospitals would have used its services to repair EndoWrists.<sup>96</sup> To the extent the higher 80% or more conversion rates were included in the Bero Report’s analysis, the penetration rates would have been higher resulting in higher lost profits.

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<sup>92</sup> Second Rebuttal Schedule 13.0.

<sup>93</sup> Smith Rebuttal Report 26.

<sup>94</sup> Bero Report 50-51.

<sup>95</sup> Bero Report 50-51.

<sup>96</sup> Bero Report 31. Deposition of Clifton Parker 166-167 (October 25, 2022).

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**H. The Bero Reports assumption FDA approval was not needed appears reasonable.**

The Smith Rebuttal Report states:<sup>97</sup>

...without 510(k) clearance from the Food and Drug Administration (“FDA”), hospitals and surgeons would be reluctant (or potentially unwilling) to use SIS’s reset “services.” For example, hospital administrators at Valley Medical Center, Larkin Community Hospital, and Franciscan Alliance stated that their hospitals do not purchase medical equipment that required FDA clearance and did not have it. Surgeon testimony also confirms that they expect that the medical devices that they use in surgery to have been cleared by the FDA. **Neither Mr. Bero nor Ms. Sargent discuss how FDA clearance would factor into the decisions of hospitals to purchase and surgeons to use SIS’s reset EndoWrist instruments, which would affect Mr. Bero’s assumed “conversion rate.”** [emphasis added]

As noted earlier, based on my experience, damages experts often rely on assumptions for areas outside their expertise. The Bero Report clearly states it assumes SIS would not need FDA approval to make the EndoWrist repairs at issue (citing discussions with Keith Johnson and Greg Posdal and the Deposition of Imron Zafar (November 1, 2022) Ex. 113 at 3).<sup>98</sup>

**I. The Bero Report’s collection rate of 70% is reasonable**

The Smith Rebuttal Report states:<sup>99</sup>

**Mr. Bero uses a collection rate of 70 percent based on an Intuitive presentation in 2020 that reports results from a “small scale” pilot refurbishment program for 6 Xi instruments.** However, the number that Mr. Bero relies on is Intuitive’s target collection rate; in its own financial analysis, **Intuitive assumed a collection rate of 40 percent**, which more closely aligns with the realized collection rates from the pilot program. Todd Tourand, Intuitive’s Director of Portfolio Management, cited low yield from collection efforts as one of the reasons Intuitive did not pursue the refurbishment program commercially beyond the pilot. Intuitive consistently assumed a 40 percent collection rate in its 2020 “Reclamation and Refurbishment

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<sup>97</sup> Smith Rebuttal Report 26-27.

<sup>98</sup> Bero Report 5. Discussions with Keith Johnson and Greg Posdal. *See also*, Deposition of Imron Zafar (November 1, 2022) Ex. 113 at 3.

<sup>99</sup> Smith Rebuttal Report 28.

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Cost” models that were developed during the pilot. [emphasis added]

The Smith Rebuttal Report ignores the Bero Report’s reference to SIS’s industry expert, Jean Sargent. Ms. Sargent noted a higher 75% collection rate would be reasonable for an expensive instrument such as the EndoWrist.<sup>100</sup> Intuitive targeted a greater than 70% collection rate for its contemplated EndoWrist refurbishment program in a September 2020 document.<sup>101</sup>

The Expert Report of Jean Sargent (“Sargent Report”) states:<sup>102</sup>

Given the ease of this collection process and what I understand to be the substantial per-instrument cost savings of 40% or more, this collection process would likely be at the high end of general industry collection rates for instrument repairs, which in my experience would be approximately 75%. [emphasis added]

The Pilot Study targeted a collection rate of greater than 70%.<sup>103</sup> The Pilot Study’s collection rate is later assumed to be 40%.<sup>104</sup> However, the Pilot Study appeared to focus on Intuitive’s ability to save costs on EndoWrist instruments,<sup>105</sup> versus addressing the “monumental” market interest (by Intuitive customers) for lower priced EndoWrist instruments.<sup>106</sup> In contrast to SIS providing substantial cost savings to hospitals, the Pilot Study’s participants received “no financial incentives.”<sup>107</sup> Of the 17 hospitals approached to participate, only 3 sites actually participated.<sup>108</sup> The Pilot Study also recognized that “Potential for 3<sup>rd</sup> party collections is more effective/efficient; can up yields with training.”<sup>109</sup>

As described in the Bero Report, SIS has 50 years of experience servicing surgical instruments and equipment<sup>110</sup> and “the interest in saving and reducing costs on robotic surgery in

<sup>100</sup> Bero Report 51. Discussion with Jean Sargent.

<sup>101</sup> Bero Report 51. 30(b)(6) Deposition of Colin Morales (November 1, 2022) at Ex. 143 (Intuitive 00626597-626616 at 604).

<sup>102</sup> Sargent Report 18.

<sup>103</sup> Morales 30(b)(6) Dep. Ex. 143 (Intuitive-00626597-626616 at 604).

<sup>104</sup> Morales 30(b)(6) Dep. Ex. 143 (Intuitive-00626597-626616 at 603).

<sup>105</sup> See, e.g., Morales 30(b)(6) Dep. Ex. 143 (Intuitive-00626597-626616 at 610-613).

<sup>106</sup> Bero Report 24-25.

<sup>107</sup> Morales 30(b)(6) Dep. Ex. 143 (Intuitive-00626597-626616 at 603).

<sup>108</sup> Morales 30(b)(6) Dep. Ex. 143 (Intuitive-00626597-626616 at 603).

<sup>109</sup> Morales 30(b)(6) Dep. Ex. 143 (Intuitive-00626597-626616 at 604).

<sup>110</sup> Bero Report 7. Compl. ¶ 1.

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the industry is something I’ve never seen before in my 25 years of being in the surgical business.”<sup>111</sup>

The Smith Rebuttal Report reduces the 70% collection rate used in the Bero Report to 40% in its Tables 3 (lost profits damages) and Table 4 (Lanham Act damages) to reflect what it refers to as Intuitive’s “assumed” 40 percent collection rate.<sup>112</sup> For the reasons described herein and since a 70% collection rate appears reasonable, I disagree with these adjustments.

### **VIII. The Bero Report’s Disgorgement Damages pertaining to SIS’s claims under the Lanham Act are appropriate.**

The Smith Rebuttal Report states:<sup>113</sup>

**I understand that Mr. Bero’s Lanham Act claim is based on one letter sent to Marin General Hospital by Intuitive regarding its utilization of a third-party reset service.** However, Mr. Bero does not offer a disgorgement amount associated with sales to only that customer. Instead, he claims that all of the instrument resets included in his lost profits damages calculation also represent disgorgement damages for Intuitive. Mr. Bero provides no explanation of how that single letter that allegedly included a false claim would cause all of SIS’s past and future lost sales, which seems entirely inconsistent with the assumptions of his lost profits analysis. That is, Mr. Bero assumes that SIS’s lost profits were caused by instrument encryption and provisions in Intuitive’s contracts with hospitals, but they also all were caused by a letter to a single hospital. [emphasis added]

The Smith Rebuttal Report fails to acknowledge the Lanham Act allegations in the Complaint.<sup>114</sup> It fails to acknowledge the Bero Report’s description of the Alleged Wrongdoings,<sup>115</sup> Disgorgement analysis,<sup>116</sup> or its use of and reliance on the Marin General Hospital letter.<sup>117</sup>

<sup>111</sup> Bero Report 25. 30(b)(6) Deposition of Keith Johnson 44 (October 27, 2022).

<sup>112</sup> Smith Rebuttal Report 29-32.

<sup>113</sup> Smith Rebuttal Report 31.

<sup>114</sup> Complaint ¶¶ 122-126.

<sup>115</sup> Bero Report 1-2.

<sup>116</sup> Bero Report 1, 4, 5, 58.

<sup>117</sup> Bero Report 59.

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**A. The Smith Rebuttal Report apparently is unaware of the Lanham Act allegations in the Complaint**

The Complaint’s disgorgement damages allegations under the Lanham Act is not simply based on one letter sent to Marin General Hospital. Rather, the Complaint alleges:<sup>118</sup>

122. SIS incorporates all of the above paragraphs as though fully set forth herein.

123. Intuitive, in connection with the sale of its EndoWrist instruments, asserted false or misleading descriptions of facts or representations in its correspondence with its and SIS’s customers and such misrepresentations were likely to cause consumer confusion or inaccurately describe the nature, characteristics, or qualities of its and SIS’s commercial activities in violation of Section 43 of the Lanham Act, 15 U.S.C. § 1125

124. Intuitive has at least misrepresented that SIS’s services are contrary to FDA approvals of the EndoWrist products and are in violation of intellectual property rights. Intuitive sent such correspondence to multiple SIS customers and potential customers. Intuitive made such statements knowingly, willfully, and/or recklessly that such statements were misleading. These misleading statements affected the purchasing decisions of such customers

125. Intuitive’s misrepresentations were made to SIS’s customers, and upon information and belief, a significant number of Intuitive customers that have, or had, Intuitive Si robots [emphasis added]

The Bero Report describes the Alleged Wrongdoing in three paragraphs on the first two pages of the Bero Report.<sup>119</sup> The Bero Report cites the Marin General Hospital letter to support the date the Lanham Act damages should begin, rather than limiting disgorgement damages only to Marin General Hospital as the Smith Rebuttal Report proposes.<sup>120</sup> As the Bero Report makes clear, I was asked to calculate disgorgement of Intuitive’s profits under the Lanham Act based on the lost SIS repair units underlying Scenario 2 – Unenforceable Contracts lost profits.<sup>121</sup>

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<sup>118</sup> Complaint ¶¶ 122-125.

<sup>119</sup> Bero Report 1-2.

<sup>120</sup> Bero Report 59.

<sup>121</sup> Bero Report 1, 4, 5, 58.

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The Smith Rebuttal Report, however, apparently is unaware of the Complaint’s Lanham Act allegations, the Bero Report’s description of the Alleged Wrongdoings, or the Bero Report’s use of and reliance on the Marin General Hospital letter.

**IX. The Smith Rebuttal Report makes unsupported deductions in its Lanham Act analyses.**

The Smith Rebuttal Report makes no reference to the Lanham Act. It does not cite the Lanham Act as “Materials Considered” in its Exhibit B.

As described in the Bero Report, under the Lanham Act, I understand a plaintiff is entitled to recover:<sup>122</sup>

...(1) **defendant’s profits**, (2) any damages sustained by the plaintiff, and (3) the costs of the action. The court shall assess such profits and damages or cause the same to be assessed under its direction. **In assessing profits the plaintiff shall be required to prove defendant’s sales only; defendant must prove all elements of cost or deduction claimed.** In assessing damages the court may enter judgment, according to the circumstances of the case, for any sum above the amount found as actual damages, not exceeding three times such amount. If the court shall find that the amount of the recovery based on profits is either inadequate or excessive the court may in its discretion enter judgment for such sum as the court shall find to be just, according to the circumstances of the case. Such sum in either of the above circumstances shall constitute compensation and not a penalty. The court in exceptional cases may award reasonable attorney fees to the prevailing party. [emphasis added]

As noted in the Bero Report, Intuitive’s profits that SIS would be entitled to under the Lanham Act are Intuitive’s sales on the Scenario 2 – Unenforceable Contracts. I understand, per above (and consistent with my experience), it is the defendant’s burden to prove its costs or deductions to those sales.

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<sup>122</sup> 15 USC 1117: Recovery for violation of rights; (a) Profits; damages and costs; attorney fees (house.gov). Bero Report 58.

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**A. The Smith Rebuttal Report primarily reduces disgorgement damages by eliminating X/Xi EndoWrist sales**

The Smith Rebuttal Report reduces disgorgement damages primarily by eliminating X/Xi EndoWrist instrument sales.<sup>123</sup> While the Smith Rebuttal Report eliminates X/Xi EndoWrist instrument sales, to my knowledge, Dr. Smith is not providing legal opinions on whether or not the X/Xi EndoWrist instrument sales are, in fact, subject to disgorgement.

**X. Conclusion**

My second rebuttal report and analyses contained herein are based upon information that is presently known and available to me. As additional information is made available, I may update my rebuttal report and analyses accordingly. In preparing for trial, I may prepare demonstrative exhibits based upon information included in this second rebuttal report, the Bero Report, the Bero Rebuttal Report or additional information that becomes available hereafter.

Respectfully submitted,



Richard F. Bero, CPA, CVA  
March 1, 2023

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<sup>123</sup> Smith Rebuttal Report 31-32. The Smith Rebuttal Report presents its adjustments on Table 4 (Smith Rebuttal Report 32). It first adjusts for what it refers to “corrections for computational and methodological errors,” then adjusts for the “removal of X/Xi EndoWrist instrument sales.” Regardless of the first adjustment, the “removal of X/Xi EndoWrist instrument sales” is the primary reduction. In other words, without the first adjustment, and just applying the second “removal of X/Xi EndoWrist instrument sales” would reduce the Smith Rebuttal Report’s claimed disgorgement by at least 95%, as described on page 14 of the Smith Rebuttal Report and shown on its Table 1, where X/Xi sales account for at least 95% of SIS’s lost revenue, which is the revenue to be disgorged.

# Data and Other Information Considered - as of March 1, 2023

## Second Rebuttal Attachment 1

### DATA AND OTHER INFORMATION CONSIDERED - AS OF THE DECEMBER 2, 2022 BERO REPORT:

#### LEGAL FILINGS:

[Surgical Instrument Service Company, Inc. v. Intuitive Surgical, Inc. \(Case No. 3:21-cv-03496-VC\)](#):

Complaint dated May 10, 2021

Defendant Intuitive Surgical, Inc.'s Notice of Motion, Motion and Memorandum of Points and Authorities in Support of its Motion to Dismiss the Complaint filed August 6, 2021

Declaration of Karen Hoffman Lent in Support of Defendant's Request for Judicial Notice in Support of Intuitive Surgical, Inc.'s Motion to Dismiss the Complaint with Exhibit 1 filed August 6, 2021

Request for Judicial Notice in Support of Intuitive Surgical, Inc.'s Motion to Dismiss the Complaint filed August 6, 2021

[Proposed Order] Granting Request for Judicial Notice filed August 6, 2021

Defendant Intuitive Surgical, Inc.'s Notice of Motion, Motion and Memorandum of Point and Authorities in Support of Motion to Stay filed August 13, 2021

[Proposed] Order Granting Defendant Intuitive Surgical Inc.'s Stay filed August 13, 2021

Declaration of Karen Hoffman Lent in Support of Defendant's Notice of Motion, Motion, and Memorandum of Points and Authorities in Support of Motion to Stay with Exhibits 1-4 filed August 13, 2021

Plaintiff Surgical Instrument Service Company, Inc.'s Opposition to Defendant's Motion to Dismiss filed August 20, 2021

Plaintiff's Initial Disclosures dated August 26, 2021

Intuitive's Initial Disclosures dated August 26, 2021

Plaintiff Surgical Instrument Service Company, Inc.'s Opposition to Defendant's Motion to Stay filed August 27, 2021

Declaration of Joshua Van Hoven in Support of Plaintiff's Opposition to Defendant's Motion to Stay with Exhibits 1 and 2 filed August 27, 2021

Declaration of Gregory J. Posdal filed August 27, 2021

Defendant Intuitive Surgical, Inc.'s Reply Memorandum of Law in Support of its Motion to Dismiss the Complaint filed September 3, 2021

Defendant Intuitive Surgical, Inc.'s Reply Memorandum of Law in Support of its Motion to Stay filed September 3, 2021

Declaration of Karen Hoffman Lent in Support of Defendant's Reply Memorandum of Law in Support of its Motion to Stay with Exhibit 1 filed September 3, 2021

Order Granting in Part and Denying in Part Motion to Dismiss filed November 23, 2021

Defendant Intuitive Surgical, Inc.'s Answer, Affirmative Defense and Counterclaims with Exhibits 1-7 filed December 14, 2021

Plaintiff/Counterclaim Defendant Surgical Instrument Service Company, Inc.'s Answer to Defendant/Counterclaim Plaintiff's Counterclaims filed January 10, 2022

Stipulated Protective Order filed with Exhibit A signed by Richard Bero, Beth Bergman, Joseph Laur, Ammar Susnerwala and Nick Romans filed March 30, 2022

Joint Stipulation and [Proposed] Order to Modify Schedule filed April 11, 2022

#### Interrogatories:

Defendant/Counterclaimant Intuitive Surgical, Inc.'s Objections and Responses to Plaintiff Surgical Instrument Service Co., Inc.'s First Set of Interrogatories dated April 29, 2022

Plaintiff Surgical Instrument Service Company, Inc.'s Answer and Objection to Defendant's Interrogatories First Set - Nos. 1-3 dated May 20, 2022

Plaintiff Surgical Instrument Service Company, Inc.'s Answer and Objections to Defendant's Interrogatories Second Set - Nos. 4-18 dated August 8, 2022

#### Restore Robotics, et al. v. Intuitive Surgical, Inc. (Case No. 5:19-cv-00055-TKW-MJF):

Defendant's Answer, Affirmative Defense and Counterclaims filed September 30, 2019

Defendant's First Amended Counterclaims with Exhibits 1-3 filed November 28, 2019

Plaintiffs Restore Robotics LLC and Restore Robotics Repairs LLC's Answer to Defendant's Amended Counterclaims filed December 12, 2019

Second Amended Complaint with Exhibits 1-5 filed March 29, 2021

Defendant's Answer and Affirmative Defense filed April 12, 2021

#### Rebotix Repair LLC v. Intuitive Surgical, Inc. (Case No. 8:20-cv-02274-VMC-TGW):

Complaint filed September 28, 2020

Defendant's Answer, Affirmative Defenses and Counterclaims with Exhibits A-E filed April 2, 2021

Rebotix's Answer and Affirmative Defenses to Intuitive's Counterclaims filed April 23, 2021

#### EXPERT REPORTS:

[Surgical Instrument Service Company, Inc. v. Intuitive Surgical, Inc. \(Case No. 3:21-cv-03496-VC\)](#):

Expert Report of Jean Sargent dated December 2, 2022

## Data and Other Information Considered - as of March 1, 2023

### Second Rebuttal Attachment 1

#### Restore Robotics, et al. v. Intuitive Surgical, Inc. (Case No. 5:19-cv-00055-TKW-MJF):

Expert Report of Heather Rosecrans dated August 20, 2021  
Expert Report of John Bomalaski dated August 20, 2021  
Expert Report of Dr. Robert D. Howe dated August 20, 2021  
Expert Report of Sara Parikh, Ph.D. dated August 20, 2021  
Expert Report of Professor Christina DePasquale dated August 20, 2021  
Expert Report of Loren K. Smith, Ph.D. dated August 20, 2021  
Expert Rebuttal Report of Loren K. Smith, Ph.D. dated September 27, 2021  
Rebuttal Expert Report of Christina DePasquale dated October 7, 2021  
Supplemental Expert Report of Christina DePasquale dated October 28, 2021  
**Any additional documents cited therein.**

#### Rebotix Repair LLC v. Intuitive Surgical, Inc. (Case No. 8:20-cv-02274-VMC-TGW):

Expert Report of Dr. John Bomalaski dated July 26 2021  
Expert Report of Robert Howe dated July 26, 2021  
Expert Report of Kurt Humphrey dated July 26, 2021  
Expert Report of Russell Lamb dated July 26, 2021  
Expert Report of Gwen Mandel dated July 26, 2021  
Expert Report of Robert Mills dated July 26, 2021  
Expert Report of Sara Parikh dated July 26, 2021  
Expert Report of Heather Rosecrans dated July 26, 2021  
Expert Report of Joshua Sharlin dated July 26, 2021  
Expert Report of Loren K. Smith, Ph.D. dated July 26, 2021  
Amended Expert Report of Sara Parikh dated August 5, 2021  
Expert Report of Larry Chiagouris dated August 30, 2021  
Rebuttal Report of Robert Mills dated August 30, 2021  
Expert Report of Kim Parnell dated August 30, 2021  
Rebuttal Expert Report of Heather Rosecrans dated August 30, 2021  
Expert Damages Rebuttal Report of Loren K. Smith, Ph.D. dated August 30, 2021  
Expert Antitrust Merits Report of Loren K. Smith, Ph.D. dated August 30, 2021  
Expert Report of Lawrence Stevens dated August 30, 2021  
Supplemental Expert Report of Russell Lamb dated September 22, 2021  
Supplemental Expert Report of Robert Mills dated September 22, 2021  
**Any additional documents cited therein.**

#### DEPOSITIONS:

#### Restore Robotics, et al. v. Intuitive Surgical, Inc. (Case No. 5:19-cv-00055-TKW-MJF):

Mark Johnson dated April 29, 2021 with Exhibits 0001-0009  
Todd Pope dated April 30, 2021 with Exhibits 1-7  
30(b)(6) Restore Robo ics LLC and Restore Rob ics Repairs LLC through Clifton Earl Parker, and Clifton Parker Individually dated May 4, 2021 with Exhibits 1-7  
David Robinson dated May 5, 2021  
Kevin May dated May 6, 2021 with Exhibits 1-24  
John "Jake" Joseph Colletti Jr., dated May 7, 2021 with Exhibits 1-13  
Greg Posdal dated May 10, 2021 with Exhibits 1-6  
Mills Vautrot dated May 11, 2021 with Exhibits 1-12  
West E. Gordon dated May 13, 2021 with Exhibits 1-17

## Data and Other Information Considered - as of March 1, 2023

### Second Rebuttal Attachment 1

Sherry Harvey dated May 14, 2021 with Exhibits 1-7

Cario Wasfy dated May 18, 2021 with Exhibits 1-23

Dave Rosa dated May 19, 2021 with Exhibits 1-9

Robert DeSantis dated May 20, 2021 with Exhibits 1-9

Kyle Marks dated May 21, 2021 with Exhibits 1-8

Tyler McDonald dated May 21, 2021 with Exhibits 1-17

Ronald Lee Blair Jr. dated May 24, 2021 with Exhibits 1-3

Eugene Otto Dickens M.D., dated May 27, 2021 with Exhibits 1-2

Amie Renee Reed dated May 27, 2021 with Exhibits 1-3

Kevin May (Vol. II) dated June 8, 2021 with Exhibits 1-6

Michael Madewell dated June 11, 2021 with Exhibits 1-21

#### Rebotix Repair LLC v. Intuitive Surgical, Inc. (Case No. 8:20-cv-02274-VMC-TGW):

Myriam Curet M.D., dated May 7, 2021 with Exhibits 1-6

Glenn Vavoso dated May 14, 2021 with Exhibits 1-39

Ronald Lee Blair, Jr. dated May 24, 2021 with Exhibits 1-22

Edward W. Harrich dated May 24, 2021 with Plaintiff's Exhibits 1-9, Defendant's Exhibits DF1-DF5

Karie Scoville dated May 26, 2021 with Exhibits 1-13

Robert DeSantis dated May 27, 2021 with Exhibits 1-29

Stacey Donovan dated May 27, 2021 with Exhibits P1-P9, D1-D3

30(b)(6) Rebotix Repair, LLC through Glenn Papit dated June 2, 2021 with Exhibits 1-24

Stan (Lay) Hamilton dated June 4, 2021 with Exhibits 1-10

David Mixner dated June 10, 2021 with Exhibits 1-18

Chris Gibson dated June 22, 2021 with Exhibits 1-22

#### In Re: Da Vinci Surgical Robot Litigation - All Cases:

Judith Schimmel dated September 22, 2022 with Exhibits 1-20

Sandra Guerro dated September 23, 2022 with Exhibits 21-46

Mark Early dated October 6, 2022 with Exhibits 28, 30, 59-81

Disha Peswani dated October 6, 2022 with Exhibits 1-17

Margaret Nixon dated October 7, 2022 with Exhibits 18-32

John Wagner dated October 11, 2022 with Exhibits 54, 56, 104-116

Shreya Purohit dated October 12, 2022 with Exhibits 33-53

John Francis M.D. dated October 14, 2022 with Exhibits 54-55

Ryan Shaw dated October 19, 2022 with Exhibits 56-74

Gayle Perry dated October 20, 2022 with Exhibits 75-79, 81-84

Ricardo Estape, M.D. dated October 22, 2022 with Exhibits 118-120, Estape 01, 34, 61, 95

Clifton Parker dated October 25, 2022 with Exhibits 121-134

30 (b)(6) Nickola (Nicky) Goodson dated October 27, 2022 with Exhibits 85-106

30(b)(6) Keith Johnson dated October 27, 2022 with Exhibits 135-140

Keith Johnson (Individually) dated October 27, 2022 with Exhibits 141-144

Imron Zafar dated November 1, 2022 with Exhibits 1-5, 111-113

Mario Lowe dated November 3, 2022 with Exhibits 81-83, 144

Kevin May dated November 3, 2022 with Exhibits 154-156, Plaintiff's Exhibit 1

John Sampson dated November 3, 2022 with Exhibits 184-193

Stan Hamilton dated November 4, 2022 with Exhibits 157, 158, 160, 204

## Data and Other Information Considered - as of March 1, 2023

### Second Rebuttal Attachment 1

Sharathchandra (Shark) Somayaji dated November 4, 2022 with Exhibits 201, 203, 205-208, 211-213, 216-218, 220, 223-224, 227-230  
Todd Tourand dated November 4, 2022 with Exhibits 39, 200, 202, 209, 210, 214, 215, 219, 221, 222, 225, 226  
30 (b)(6) Marshall Mohr dated November 7, 2022 with Exhibits 231-236  
30(b)(1) Grant DuQue (Personal) dated November 8, 2022 with Exhibits 238, 240-241, 243-244, 246-249, 257-258, 263  
30(b)(6) Grant DuQue dated November 8, 2022 with Exhibits 264, 266-269  
David Fabricant dated November 8, 2022 with Exhibits 239, 239A-239D, 242, 242A, 245, 245A, 250-253, 253A, 254-256, 259, 261-262  
Catherine Mohr M.D. dated November 9, 2022 with Exhibits 270-285  
30(b)(1) Colin Morales (Personal) dated November 9, 2022 with Exhibits 120-134  
30(b)(6) Colin Morales dated November 9, 2022 with Exhibits 135-143  
Dan Jones dated November 10, 2022 with Exhibits 286-294  
Rick Ferreira dated November 10, 2022 with Exhibits 207-220, 295-296  
30 (b)(6) Nickola (Nicky) Goodson dated November 16, 2022 with Exhibit 297

#### Surgical Instrument Service Company, Inc. v. Intuitive Surgical, Inc.:

30(b)(1) Jose Gonzales (Personal) dated October 17, 2022 with Exhibits 39, 45, 82, 83  
30(b)(6) Jose Gonzales dated October 17, 2022 with Exhibits 84-99, 117  
30(b)(6) Greg Posdal dated November 1, 2022 with Exhibits 145-146, Previously Marked Exhibits 136, 138  
30(b)(1) Greg Posdal (Personal) dated November 1, 2022 with Exhibits 147-148, Previously Marked Exhibits 107, 143

#### DISCUSSIONS WITH:

SIS personnel:

Keith Johnson, Executive Vice President, Sales and Clinical Programs

Greg Posdal, President and C.E.O

Jean Sargent, industry expert

#### DOCUMENTS WITH BATES STAMPS:

ALPIN00001-00005	Intuitive-00223902-00223935	Intuitive-00602325	Restore-00001939	SIS091827-091828	SIS196155
BB001260	Intuitive-00223937-00223970	Intuitive-00602576-00602578	Restore-00002260-00002265	SIS091833	SIS196156
BB002642-002644	Intuitive-00223998-00224033	Intuitive-00602603	Restore-00002891-00002915	SIS091834	SIS196158
BSWH-0000446-0000448	Intuitive-00230855	Intuitive-00603164	Restore-00003932-00003942	SIS091839	SIS196159
CCSC-I 000038-000051	Intuitive-00230856	Intuitive-00603510	Restore-00006083-00006084	SIS091840-091841	SIS196209
CMR-00001108-00001111	Intuitive-00231004	Intuitive-00603990-00603991	Restore-00009387	SIS091842-091844	SIS196210
Intuitive 00398790-00398858	Intuitive-00234762-00234838	Intuitive-00604054-00604055	Restore-00012292	SIS091846-091913	SIS196219
Intuitive-00000157-00000209	Intuitive-00240550-00240638	Intuitive-00604123	Restore-00013682-00013692	SIS092142	SIS196220
Intuitive-00000256	Intuitive-00241336-00241370	Intuitive-00604127	Restore-00022922	SIS092353-092356	SIS196226
Intuitive-00000257	Intuitive-00246469-00246491	Intuitive-00604145	Restore-00055932-00055939	SIS092357-092359	SIS196227
Intuitive-00000258	Intuitive-00254135	Intuitive-00605636	SIS000001	SIS092410-092477	SIS196228
Intuitive-00000259	Intuitive-00254875-00254877	Intuitive-00620200	SIS000022	SIS092637-092638	SIS196230-196231
Intuitive-00000260	Intuitive-00255397	Intuitive-00624829	SIS000023	SIS092666-092668	SIS196232
Intuitive-00000261	Intuitive-00258654	Intuitive-00626145	SIS000024	SIS092675	SIS196235
Intuitive-00000276	Intuitive-00261446-00261486	Intuitive-00646018-00646041	SIS000025	SIS092916-092917	SIS196236
Intuitive-00000316	Intuitive-00265324-00265336	Intuitive-00670355	SIS000026	SIS093097	SIS196239
Intuitive-00001087-00001146	Intuitive-00266133	Intuitive-00671020-00671035	SIS000028-000029	SIS093099-093101	SIS196240
Intuitive-00001237-00001311	Intuitive-00268606-00268612	Intuitive-00674398	SIS000033-000034	SIS093168-093170	SIS196251
Intuitive-00001639	Intuitive-00268762-00268767	Intuitive-00685424	SIS000035-000045	SIS093171-093176	SIS196252
Intuitive-00001788-00001851	Intuitive-00270554-00270572	Intuitive-00686044	SIS000047-000049	SIS093361-093364	SIS196253
Intuitive-00002050-00002092	Intuitive-00273157	Intuitive-00686068	SIS000050	SIS093423-093425	SIS196254
Intuitive-00002138	Intuitive-00273226-00273228	Intuitive-00686068	SIS000051	SIS093436-093438	SIS196255
Intuitive-00002937-00002944	Intuitive-00273229-00273259	Intuitive-00688902	SIS000051-000054	SIS093894	SIS196256

# Data and Other Information Considered - as of March 1, 2023

## Second Rebuttal Attachment 1

Intuitive-00003494	Intuitive-00273264-00273294	Intuitive-00689957	SIS000056	SIS093980-093981	SIS196258
Intuitive-00003866-00003869	Intuitive-00273300	Intuitive-00695006	SIS000057-000058	SIS093984	SIS196259
Intuitive-00004126-00004172	Intuitive-00273715	Intuitive-00695144	SIS000059-000060	SIS094006-094008	SIS196260
Intuitive-00004412-00004420	Intuitive-00278244-00278245	Intuitive-00695231-00695234	SIS000061	SIS094014-094016	SIS196273
Intuitive-00004661	Intuitive-00279920-00279922	Intuitive-00695236-00695237	SIS000097-000112	SIS094023-094090	SIS196274
Intuitive-00004692-00004704	Intuitive-00279923-00279957	Intuitive-00695243-00695245	SIS00118-000137	SIS094101-094103	SIS196288
Intuitive-00004811	Intuitive-00279958-00279983	Intuitive-00700899-00700909	SIS00138-000157	SIS094111	SIS196289-196290
Intuitive-00004968-00004986	Intuitive-00282732-00282736	Intuitive-00701320-00701322	SIS00158-000165	SIS094176	SIS196291
Intuitive-00005049	Intuitive-00285709-00285741	Intuitive-00701343	SIS00173-000181	SIS094245	SIS196292
Intuitive-00005051-00005067	Intuitive-00288971-00288972	Intuitive-00701739	SIS00183-000198	SIS094284	SIS196309
Intuitive-00005135-00005147	Intuitive-00288975-00288976	Intuitive-00701743 - 00701744	SIS00202-000204	SIS094291	SIS196310
Intuitive-00005309-00005328	Intuitive-00292437-00292461	Intuitive-00702284	SIS00213-000215	SIS094448-094450	SIS196311
Intuitive-00005955-00005989	Intuitive-00292544-00292628	Intuitive-00752495	SIS00216-000217	SIS094462-094463	SIS196315
Intuitive-00008839-00008905	Intuitive-00293271-00293356	Intuitive-00784942-00784972	SIS00218-000220	SIS094498-094501	SIS196316
Intuitive-00009073-00009076	Intuitive-00293400-00293606	Intuitive-00807510-00807557	SIS00224-000225	SIS094524-094525	SIS196317
Intuitive-00009517-00009561	Intuitive-00296258-00296294	Intuitive-00808372-00808551	SIS00226-000227	SIS094530	SIS196318
Intuitive-00009716 - 00009717	Intuitive-00296295-00296298	Intuitive-00810697	SIS00228-000229	SIS094531	SIS196319
Intuitive-00009824-00009880	Intuitive-00313683-00313684	Intuitive-00817085-00817118	SIS00239-000240	SIS094572-094573	SIS196320
Intuitive-00010119	Intuitive-00313685-00313730	Intuitive-00834771	SIS00241-000260	SIS094574	SIS196321
Intuitive-00010179	Intuitive-00323352	Intuitive-00834793	SIS00261-000268	SIS094618-094622	SIS196322-196323
Intuitive-00011483	Intuitive-00323856-00323930	Intuitive-00834845	SIS00274-000282	SIS094631-094635	SIS196327
Intuitive-00011487	Intuitive-00333561-00333572	Intuitive-00846238	SIS00293-000294	SIS094779-094781	SIS196328
Intuitive-00012397-00012400	Intuitive-00335054	Intuitive-00849019	SIS00302-000317	SIS094825	SIS196329
Intuitive-00012401-00012543	Intuitive-00338790-00338805	Intuitive-00882424	SIS00319-000321	SIS094857-094871	SIS196330-196332
Intuitive-00014019	Intuitive-00354548-00354590	Intuitive-00897681-00897695	SIS00322-000325	SIS094955-094969	SIS196333
Intuitive-00014395-00014396	Intuitive-00356654-00356745	Intuitive-00902243	SIS00355-000357	SIS095191-095192	SIS196334-196335
Intuitive-00015314-00015351	Intuitive-00363883-00363901	Intuitive-00945455	SIS00392-000394	SIS095220-095223	SIS196336-196337
Intuitive-00015458-00015493	Intuitive-00363903-00363918	Intuitive-00982519	SIS00395-000414	SIS095278-095280	SIS196338
Intuitive-00018120	Intuitive-00364420-00364444	Intuitive-00986625	SIS00415-000422	SIS095294-095296	SIS196340-196342
Intuitive-00019774-00019775	Intuitive-00364863-00364874	Intuitive-01011044-01011053	SIS00433	SIS095312	SIS196343
Intuitive-00019946-00020046	Intuitive-00365857-00365897	Intuitive-01024426-01024427	SIS00437-000439	SIS095344	SIS196344
Intuitive-00020363-00020372	Intuitive-00366044-00366053	Intuitive-01032092	SIS00440-000444	SIS095440	SIS196362-196366
Intuitive-00021011	Intuitive-00367019-00367063	Intuitive-01034247	SIS00449	SIS095539-095540	SIS196367
Intuitive-00024105	Intuitive-00367171-00367172	Intuitive-01069706-01069707	SIS00450-000451	SIS095555-095622	SIS196368
Intuitive-00024910-00024941	Intuitive-00367339 - 00367344	Intuitive-01071172-01071202	SIS00455	SIS095665-095666	SIS196369-196370
Intuitive-00025115-00025121	Intuitive-00367339-00367344	Intuitive-01085248	SIS00459 001	SIS095669-095725	SIS235009-235017
Intuitive-00027482-00027488	Intuitive-00367345	Intuitive-01087438	SIS00463-000465	SIS095923-095928	SIS235018-235028
Intuitive-00028665-00028668	Intuitive-00367522-00367534	Intuitive-01101507	SIS00473-000476	SIS095938-095940	SIS235244-235253
INTUITIVE-00028864	Intuitive-00367724-00367726	Intuitive-01101508	SIS00477	SIS096017-096021	SIS235254-235256
Intuitive-00028874-00028963	Intuitive-00367727	Intuitive-01115600	SIS00481-000484	SIS096161-096164	SIS235283-235298
Intuitive-00029346-00029347	Intuitive-00367733-00367790	Intuitive-01126654-01126655	SIS00491	SIS096196-096197	SIS235301-235305
Intuitive-00030279-00030285	Intuitive-00367806-00367807	Intuitive-01132295	SIS00492-000495	SIS096225	SIS236038-236053
Intuitive-00030451-00030517	Intuitive-00367808-00367812	Intuitive-01134566	SIS00506-000525	SIS096226	SIS236058-236082
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Intuitive-00105904-00106106	Intuitive-00581597	REBOTIX054620-054620	SIS033590-033593	SIS142683-142698	SIS341124
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Intuitive-00186899	Intuitive-00595444	REBOTIX140015-140019	SIS071129-071130	SIS191496	SIS357273
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#### DOCUMENTS WITHOUT BATES STAMPS:

SIS Financial Statements:

2019 income statement xls  
Apr 2018 Income Statement.xls

SIS Sales by Customer:

Annual Sales by Hosp.xls

SIS Tax Returns:

Tax Return - Surgical Instrument Service Co. - 2019 Client Copy

Copy of State Tax Research (003)  
Dept\_Summary (1)  
Dept\_Summary

Vizient\_Membership\_Eligibility-2022-11-26T21\_40\_59  
Vizient\_Public\_Sector\_Eligibility-2022-11-26T21\_43\_04

#### INDEPENDENT RESEARCH:

Intuitive Surgical, Inc. Form 10-K for the fiscal year ended December 31, 2017  
Intuitive Surgical, Inc. Annual Report 2018 with Form 10-K for the fiscal year ended December 31, 2018  
Intuitive Surgical, Inc. Annual Report 2019 with Form 10-K for the fiscal year ended December 31, 2019  
Intuitive Surgical, Inc. Form 10-K for the fiscal year ended December 31, 2020  
Intuitive Surgical, Inc. Form 10-K for the fiscal year ended December 31, 2021

New Membership Agreement Between Vizient and the Children's Hospital Association Expands Services to Include Supply Chain Analytics Solutions

## Data and Other Information Considered - as of March 1, 2023

### Second Rebuttal Attachment 1

Vizient Announces 11 Member Agreements for Q1 2022

Vizient Announces 15 New, Renewed or Expanded Member Agreements in Q1

Vizient Announces 21 New, Renewed or Expanded Member agreements in Q2

Vizient Announces 35 New, Renewed or Expanded Member Agreements in Q3 and Q4 of 2020

Vizient Announces 97 New, Renewed or Expanded Member Agreements in 2021

Vizient Announces New Member Agreement with The University of Texas System

Vizient Announces New Membership Agreement with Leading Academic Health System

Vizient Announces New Membership Agreement with SSM Health

da Vinci Surgical System EndoWrist/Single-Site Instrument & Accessory Catalog (May 2014)

Da Vinci Xi Instrument & Accessory Catalog (January 2019)

Da Vinci X/Xi Instrument & Accessory Catalog (October 2021)

#### WEBSITES:

<https://www.aha.org/statistics/fast-facts-us-hospitals>

<https://bmpmedical.com/reasons-to-switch-to-single-use-medical-devices-and-disposable-medical-supplies/>

<https://www.carevoyance.com/blog/acute-care-hospitals>

<https://www.cdc.gov/oralhealth/infectioncontrol/faqs/single-use-devices.html>

<https://www.definiivehc.com/blog/how-many-hospitals-are-in-the-us>

<https://www.definiivehc.com/blog/top-10-gpos-by-staffed-beds>

<https://www.fda.gov/media/150141/download>

<https://www.fda.gov/medical-devices/reprocessing-reusable-medical-devices/what-are-reusable-medical-devices>

<https://www.fda.gov/medical-devices/products-and-medical-procedures/reprocessing-reusable-medical-devices>

<https://healtrustpg.com/about-healthtrust/>

<https://investors.premierinc.com/events-and-reports/reports/default.aspx?section=report>

<https://investors.premierinc.com/news/press-release-details/2016/Premier-Inc-and-Banner-Health-Expand-Partnership/default.aspx>

<https://www.jusice.gov/atr/horizontal-merger-guidelines-08192010>

<https://premierinc.com/about>

<https://rebotixrepair.com>

<https://newsroom.vizientinc.com/en-US/releases/vizient-announces-11-member-agreements-for-q1-2022>

<https://supplychainassociation.org/about-us/what-is-gpo>

<https://web.archive.org/web/20191108191050/https://www.vizientinc.com/what-we-do>

<https://www.yankeealliance.com/content/premier-certified-sponsor-affiliates>

<https://www.vizientinc.com>

Moore, Eric J., "Robotic Surgery," Britannica (<https://www.britannica.com/science/robotic-surgery>)

15 USC 1117: Recovery for violation of rights (a) Profits; damages and costs; attorney fees (house.gov)

#### OTHER:

American Institute of Certified Public Accountants (AICPA) Practice 06-4 (2006)

Association of International Certified Public Accountants (AICPA) Forensic & Valuation Services Practice Aid – Calculating Lost Profits (2018)

The Comprehensive Guide to Economic Damages: Volume One (2020 6<sup>th</sup> ed., BVR Publications)

#### DATA AND OTHER INFORMATION CONSIDERED - RECEIVED AFTER THE BERO REPORT DATED DECEMBER 2, 2022:

#### ADDITIONAL LEGAL FILING:

Intuitive Surgical, Inc. Responses to Rebotix Repair, LLC's Data Questions dated July 9, 2021

# Data and Other Information Considered - as of March 1, 2023

## Second Rebuttal Attachment 1

### ADDITIONAL EXPERT REPORT:

Expert Report of Loren K. Smith, Ph.D. dated December 2, 2022

### ADDITIONAL BATES DOCUMENTS:

Intuitive-00000316.xlsm  
Intuitive-00595406.XLSX  
Intuitive-00595407.xlsx  
Intuitive-00595408.xlsx  
Intuitive-00595409.xlsx  
Intuitive-00595410.xlsx  
Intuitive-00595411.xlsx  
Intuitive-00595412.xlsx  
Intuitive-00595413.xlsx  
Intuitive-00595415.xlsx  
Intuitive-00595416.XLSX  
Intuitive-00595417.xlsx  
Intuitive-00595418.xlsx  
Intuitive-00595419.xlsx  
Intuitive-00595420.xlsx  
Intuitive-00595421.xlsx  
Intuitive-00595422.xlsx  
Intuitive-00595423.xlsx  
Intuitive-00595424.xlsx  
Intuitive-00595425.xlsx  
Intuitive-00595426.xlsx  
Intuitive-00595427.xlsx  
Intuitive-00595428.xlsx  
Intuitive-00595434.xlsx  
Intuitive-00595435.xlsx  
Intuitive-00595436.xlsx  
Intuitive-00695144.xlsx  
Intuitive-00695232.xlsx  
Intuitive-00695233.xlsx  
Intuitive-00695234.xlsx  
Intuitive-00701322.xlsx  
REBOTIX000253-000263  
REBOTIX144629-144633  
SIS000046  
SIS001637.xlsx  
SIS001703-001716  
SIS009067-009112  
SIS048254  
SIS048255.xlsx  
SIS337172.xlsx

## Data and Other Information Considered - as of March 1, 2023

### Second Rebuttal Attachment 1

#### ADDITIONAL NON-BATES DOCUMENTS:

##### Smith Workpapers:

0. Master Script.R  
Disgorgement Tables.xlsx  
Figures - Trend Charts.xlsx  
Lost Profits Table.xlsx  
Matching Checks.xlsx

#### DATA AND OTHER INFORMATION CONSIDERED - RECEIVED AFTER THE BERO REBUTTAL REPORT DATED JANUARY 18, 2023:

#### ADDITIONAL EXPERT REPORTS:

SIS v. Intuitive - Expert Report of Dr. Russell L. Lamb dated December 2, 2022  
Expert Antitrust Mertis Rebuttal Report of Loren K. Smith, Ph.D. dated January 18, 2023  
Expert Damages Rebuttal Report of Loren K. Smith Ph.D., dated January 18, 2023

#### ADDITIONAL DISCUSSIONS WITH:

##### SIS personnel:

Keith Johnson, Executive Vice President, Sales and Clinical Programs  
Greg Posdal, President and C.E.O  
Chris Gibson, Rebofix's COO

#### ADDITIONAL BATES DOCUMENTS:

Intuitive-00103407.pdf  
Intuitive-00367019.pdf  
Intuitive-00566055.pdf  
Intuitive-00595405  
Intuitive-00595406  
Intuitive-00595407  
Intuitive-00595408  
Intuitive-00595409  
Intuitive-00595410  
Intuitive-00595411  
Intuitive-00595412  
Intuitive-00595413  
Intuitive-00595415  
Intuitive-00595416  
Intuitive-00595417  
Intuitive-00595418  
Intuitive-00595419  
Intuitive-00595420  
Intuitive-00595421  
Intuitive-00595422  
Intuitive-00595423  
Intuitive-00595424  
Intuitive-00595425  
Intuitive-00595426

## Data and Other Information Considered - as of March 1, 2023

### Second Rebuttal Attachment 1

Intuitive-00595427  
Intuitive-00595428  
Intuitive-00595434  
Intuitive-00595435  
Intuitive-00595436  
Intuitive-00595673.pdf  
Intuitive-00603990.pdf  
Intuitive-00603992 (1).xlsx  
Intuitive-00603992 (2)  
Intuitive-00626145.xlsx  
Intuitive-00695144  
Intuitive-00695232  
Intuitive-00695233  
Intuitive-00695234  
Intuitive-00701322  
Intuitive-00706090  
Intuitive-02025757\_HIGHLY CONFIDENTIAL  
Intuitive-02025758\_HIGHLY CONFIDENTIAL  
Intuitive-02025759\_HIGHLY CONFIDENTIAL  
  
Rebotix061127.pdf  
REBOTIX162404.pdf  
REBOTIX175326\_Highly Confidential.xlsx  
  
SIS000093.pdf

#### ADDITIONAL NON-BATES DOCUMENTS:

Letters from The Food and Drug Administration (FDA) to Iconocare Health regarding K210478 dated Sept. 30, 2022 and Nov. 15, 2022

Smith Workpapers:  
Bero Sensitivities

#### ADDITIONAL DEPOSITION:

Rebotix Repair LLC v. Intuitive Surgical, Inc. (Case No. 8:20-cv-02274-VMC-TGW):

Deposition of Anthony McGrogan dated June 7, 2021

#### ADDITIONAL INDEPENDENT RESEARCH:

FDA Clearance to Remanufacture Da Vinci Robotic Instruments Could Present Hospitals with Substantial Savin.pdf

Any additional documents, websites, or other information referenced throughout this report.

## SECOND REBUTTAL ATTACHMENT 2



**RICHARD F. BERO, CPA, CVA**  
N27 W23960 Paul Road, Suite 202, Pewaukee, WI 53072  
Phone – (262) 522-7922 Fax – (262) 436-2444  
[rbero@berogroup.com](mailto:rbero@berogroup.com)

### ***PROFESSIONAL EXPERIENCE:***

**The BERO Group / Corporate Financial Advisors, LLC**  
Managing Director  
Waukesha, Wisconsin

Mr. Bero founded Corporate Financial Advisors in 1995 and served as Managing Director. The BERO Group evolved from Corporate Financial Advisors and Mr. Bero serves as Managing Director. Mr. Bero provides financial and accounting consulting services and expert testimony pertaining to valuation issues and financial damages issues.

**Coopers & Lybrand**  
Manager – Litigation & Claims Services  
Milwaukee, Wisconsin

Mr. Bero was the Manager and Practice Leader of the Coopers & Lybrand Milwaukee Litigation & Claims Services practice.

**Peterson Consulting Limited Partnership**  
Executive Consultant  
Milwaukee, Wisconsin  
Chicago, Illinois

Mr. Bero provided litigation and business dispute support services to trial attorneys and corporate counsel.

## ***EDUCATION:***

**University of Wisconsin–Madison** 1986  
Bachelor of Business Administration  
Accounting and Finance

**ACTIVITIES/OTHER:**

Intellectual Property Valuation Instructor – National Association of Certified Valuation Analysts  
Licensing Executives Society – Co-Chair Wisconsin Chapter – 2006-2008  
Intellectual Property Owners Association – Damages Committee Member – 2004-present  
National Association of Certified Valuation Analysts, CVA  
Wisconsin Institute of Certified Public Accountants:  
    Board of Directors – 2000-2002  
    Chairman CPA's In Industry – Committee 1997-1999  
    Outstanding Committee Chairperson Award – 1997-1998  
American Institute of Certified Public Accountants  
Becker CPA Review – Instructor 1995-1998

**EXPERT WITNESS TESTIMONY – LAST FOUR YEARS:**

*MCP IP, LLC v. .30-06 Outdoors, LLC; and Daibow, Inc.*  
United States District Court – Southern District of Ohio  
Case No. 2:21-cv-00581-ALM-CMV (filed 2/9/21)  
February 2023 (Hearing Testimony)

*Crystal Lagoons U.S. Corp. and Crystal Lagoons Technology Inc. v. Cloward H2O LLC and Pacific Aquascape International, Inc.*  
United States District Court – District of Utah  
Case No. 2:19-cv-00796-BSJ (filed 10/21/19)  
December 2022 (Deposition Testimony)

*Hangzhou Chic Intelligent Technology Co., Ltd., and Unicorn Global, Inc. v. The Partnership and Unincorporated Associations Identified on Schedule "A"*  
United States District Court – Northern District of Illinois  
Case No. 1:20-cv-04806 (filed 8/17/20)  
December 2022 (Hearing Testimony)  
February 2022 (Deposition Testimony)

*Condair Group AG v. Dri-Steem Corporation*  
United States District Court – U.S. District of Minnesota  
Case No. 0:21-cv-00863 (filed 3/29/21)  
September 2022 (Deposition Testimony)

*Don Lee Farms, a division of Goodman Food Products, Inc., v. Beyond Meat Inc., et al.*  
State of California – Los Angeles County  
Case No. BC662838 (filed 5/25/17)  
April 2022 (Deposition Testimony)

*G.W. Lisk Company, Inc. v. Power Packer North America, Inc. d/b/a GITS Manufacturing Company*  
United States District Court – Southern District of Iowa  
Case No. 4:17-cv-00273 (filed 7/21/17)  
April 2022 (Deposition Testimony)

*Sartin et al. v. Chula Vista Inc. et al.*  
United States District Court – Eastern District of Wisconsin  
Case No. 2:18-cv-01890-WED (filed 11/30/18)  
October 2021 (Deposition Testimony)

*Cyntec Company, Ltd. v. Chilisin Electronics Corp. and Chilisin America Ltd.*  
United States District Court – Northern District of California  
Case No. 4:18-cv-00939-PJH (filed 2/14/18)  
August 2021 (Trial Testimony)  
June 2020 (Deposition Testimony)

*Wudi Industrial (Shanghai) Co., Ltd. v. Wai L. Wong*  
United States District Court – Eastern District of Virginia  
Case No. 1:20-cv-00908-CMH-MSN (filed 8/7/20)  
April 2021 (Deposition Testimony)

*Vermeer Corporation v. The Toro Company*  
United States District Court – Southern District of Iowa  
Case Nos. 4:17-cv-0076, 4:19-cv-00050 (filed 2/28/17; 2/12/19)  
October 2020 (Deposition Testimony)

*AOS Holding Company and A.O. Smith Corporation v. Bradford White Corporation*  
United States District Court – District of Delaware  
Case No. 1:18-cv-00412-LPS (filed 3/16/18)  
August 2020 (Trial Testimony)  
November 2019 (Deposition Testimony)

*RAM Group, Inc. v. H5G, LLC*  
State of Wisconsin – Milwaukee County  
Case No. 2018CV010102 (filed 12/10/18)  
June 2020 (Deposition Testimony)

*Dimensions Events LLC v. Danziger USA*  
Chicago Rabbinical Council (DT #17-09)  
May 2019 (Arbitration Hearing Testimony)  
May 2019 (Deposition Testimony)

*Smart Solar, Inc. d/b/a Smart Living Home & Garden v. Sky Billiards, Inc. d/b/a Best Choice Products*  
United States District Court – Northern District of Illinois  
Case No.: 1:17-cv-04211 (filed 6/2/17)  
April 2019 (Deposition Testimony)

*Gold & Levy d/b/a Rosseto v. Cal-Mil Plastic Products, Inc., et al.*  
United States District Court – Northern District of Illinois  
Case No.: 1:17-cv-00786-JBG-YBK (filed 1/31/17)  
December 2018 (Deposition Testimony)

**PUBLICATIONS:**

The Comprehensive Guide to Economic Damages, “Patent Infringement Damages: Lost Profits and Royalties”, “Design Patent Damages” and “Trade Secret Damages” (Chapters 28, 29 and 30, 2020 6th ed., Business Valuation Resources, LLC)

Bero, Richard. *The Litigator’s Damages Blueprint: The Pragmatic Solution*. Wisconsin: 422 Doty, LLC, 2019

The Comprehensive Guide to Economic Damages, “Patent Infringement Damages: Lost Profits and Royalties” and “Trade Secret Damages” (Chapters 26 and 27, 2018 5<sup>th</sup> ed., BVR Publications)

The Comprehensive Guide to Economic Damages, “Patent Infringement Damages: Lost Profits and Royalties” (Chapter 26, 2016 4<sup>th</sup> ed., BVR Publications)

The Comprehensive Guide to Lost Profits and Other Commercial Damages, “Patent Infringement Damages: Lost Profits and Royalties” (Chapter 25, 2014 3<sup>rd</sup> ed., BVR Publications)

April 2011 – CCH Business Valuation Alert, “The *Uniloc* Case: 25 Percent Rule of Thumb Rejected”

The Comprehensive Guide to Lost Profits, “Lost Profits Damages in Patent Infringement Lawsuits” (Chapter 19, 2011 ed., BVR Publications)

August 2009 – IP Law360 – “Demand for the Patented Product – Lower Bar?”

The Comprehensive Guide to Lost Profits, “Lost Profits Damages in Patent Infringement Lawsuits” (Chapter 12, 2009 ed., BVR Publications)

October 2008 – AIPLA White Paper – “Constructing Royalty Rates”

February 2008 – IP Law360 – “IP Litigation in China and the U.S.”

Global Intellectual Property Asset Management Report, “Intellectual Property Metrics Today: It Can Be Done” (June 2005 and July 2005)

Proving and Pricing Construction Claims, “Claims for Lost Profit” (Chapter 14, 2nd ed., 1996, Wiley Law Publications)

**PRESENTATIONS:**

December 2022                   Business Valuation Resources, LLC  
   Commercial Success – Using Economic Analysis to Show Patentability  
   Co-Presenter: Shane Brunner, Michael Best & Friedrich LLP

November 2021                   Business Valuation Resources, LLC  
   BVR's Special Series on New Economic Damages Guide  
   Patent Royalty Damages – What's the Approach?  
   Co-Presenter: John L. Abramic, Steptoe & Johnson LLP

May 2021	Business Valuation Resources, LLC National Economic Damages Virtual Conference 2021 (Day 1) Patent Infringement Damages Co-Presenter: Autumn N. Nero, Perkins Coie LLP
November 2020	American Intellectual Property Law Association Damages Subcommittee – Speaker Series Webinar Part II The Pragmatic Solution©
May 2020	American Intellectual Property Law Association Damages Subcommittee – Speaker Series Webinar Part I The Pragmatic Solution©
February 2020	Marquette Law School Guest Instructor – IP Litigation Class Milwaukee, Wisconsin
May 2019	Milwaukee Bar Association The Pragmatic Solution© Co-Presenter: Shane Brunner, Milwaukee Best & Friedrich LLP Milwaukee, Wisconsin
July 2018	Intellectual Property Owners Association – IP Chat Channel Webinar What's Next for Design Patent Damages? The DOJ Test on Trial Co-Presenters: James Dottavio, Ford Motor Company and Elizabeth Ferrill, Finnegan, Henderson, Farabow, Garrett & Dunner, LLP
September 2016	Wisconsin Intellectual Property Law Association Patent and IP Damages Update Milwaukee, Wisconsin
December 2015	WestLegalEdcenter Webinar Recent Patent Royalty Damages Decisions – Update & Discussion
October 2015	WestLegalEdcenter Webinar Recent Patent Royalty Damages Decisions – Update & Discussion
October 2015	Milwaukee Bar Association VirnetX and Ericsson – The Latest on Apportionment and Comparable Licenses Milwaukee, Wisconsin
July 2015	Hot Topics in Patent Royalty Damages Webinar Business Valuation Resources' 2015 Special Series on Intellectual Property
April 2014	Michigan Intellectual Property Law Association Hot Topics in Patent Damages Troy, Michigan
May 2013	Hot Topics in Patent Royalty Damages Business Valuation Resources Online Symposium on Economic Damages: Part 3 Chicago, Illinois

September 2011	WestLegalEdcenter Webinar Recent Patent Damages Decisions – What is the Effect
August 2011	WestLegalEdcenter Webinar Constructing Royalty Rate Damages
January 2011	The Evolution of the Entire Market Value Rule Business Valuation Resources Webinar Series on Advanced Topics in Lost Profits Damages Chicago, Illinois
September 2010	Patent Damages: Managing the Risks and Contingent Costs Business Valuation Resources / Morningstar Summit on Best Practices in Valuing Intellectual Property Chicago, Illinois
March 2010	Tianjin Bar Association Damage Analysis Techniques and Considerations in U.S. Patent Litigations Tianjin, China
March 2010	Beijing Lawyers Association Damage Analysis Techniques and Considerations in U.S. Patent Litigations Beijing, China
December 2009	Milwaukee Bar Association Constructing Royalty Rate Damages Milwaukee, Wisconsin
October 2009	Michigan Intellectual Property Law Association Constructing Royalty Rate Damages Detroit, Michigan
June 2009	Licensing Executive Society – Chicago Chapter Constructing Royalty Rates Chicago, Illinois
March 2009	Milwaukee Bar Association Patent Infringement Damages – Working Effectively With Your Damages Expert Milwaukee, Wisconsin
January 2009	Wisconsin Intellectual Property Law Association Constructing Royalty Rates Milwaukee, Wisconsin
November 2008	Licensing Executive Society – Minnesota Chapter Constructing Royalty Rates Minneapolis, Minnesota
October 2008	American Intellectual Property Law Association – Annual Meeting Constructing Royalty Rates Washington, D.C.

October 2008	Minnesota Intellectual Property Law Association Constructing Royalty Rates Minneapolis, Minnesota
June 2008	Presentation to Judges and IP attorneys in China The Development of Patent Damages Shenzhen, China
May 2008	Licensing Executive Society International – Spring Conference Avoiding Intellectual Property Hurdles in the U.S. - The View from China Roundtable Moderator Chicago, Illinois
March 2008	Marquette Law School Royalty Damages in Patent Litigation Guest Instructor – IP Litigation Class Milwaukee, Wisconsin
October 2007	Guarding the Treasure: IP Valuation & Remedies Panelist Sponsored by Foley & Lardner New York, New York
October 2007	Shanghai Bar Association Patent Litigation & Valuation – Real World Examples in the U.S. Shanghai, China
October 2007	Shenzhen Society of Certified Public Appraisers Intellectual Property, Valuation and Damages Analysis – Real World Examples in the U.S. Shenzhen, China
May 2007	Shanghai Intellectual Property Service Center Intellectual Property in the U.S.: Opportunities, Valuation & Litigation Shanghai, China
May 2007	Shenzhen Bar Association Managing and Understanding the Value of IP – Real World Examples in the U.S. Shenzhen, China
October 2006	China Hi-Tech Fair 2006 Protection of Chinese Intellectual Property in the U.S. Patent Damages & Ways to Avoid Infringement Shenzhen, China
August 2006	Nanshan Sub-Bureau of Intellectual Property Administration Intellectual Property Value Issues in the United States an Overview for Chinese Businesses Shenzhen, China

March 2006	Milwaukee Bar Association Hindsight is 20/20: Developing & Presenting Damages in Intellectual Property Litigation and Complex Litigation Milwaukee, Wisconsin
December 2005	Wisconsin Intellectual Property Law Association Intellectual Property Damages Update & Discussion Pewaukee, Wisconsin
October 2005	Licensing Executives Society – Annual Meeting Facilitator: Advanced Practices Working Session III: To Sue or Not? How to Decide Phoenix, Arizona
September 2005	Digital Fabrication 2005 Seminar Panel Discussion: Intellectual Property Baltimore, Maryland
September 2005	Intellectual Property Owner's Annual Meeting Patent Infringement Damages Update and Discussion Seattle, Washington
April 2005	Licensing Executives Society – Wisconsin Chapter What's Reasonable: Royalty Damages in Patent Litigation Fond Du Lac, Wisconsin

# Second Rebuttal Schedules Index

Schedule #	Title
Second Rebuttal Schedule 1.0	Damages Summary
Second Rebuttal Schedule 2.0	Scenario 1 - Discounted Lost Profits: In-house Model
Second Rebuttal Schedule 2.1	Scenario 1 - Undiscounted Lost Profits: In-house Model
Second Rebuttal Schedule 2.2	Scenario 1 - Lost EndoWrist Repair Units
Second Rebuttal Schedule 3.0	Scenario 1 - Discounted Lost Profits: Distributor Model
Second Rebuttal Schedule 3.1	Scenario 1 - Undiscounted Lost Profits: Distributor Model
Second Rebuttal Schedule 4.0	Scenario 2 - Discounted Lost Profits: In-house Model (2 Year X/Xi Delay)
Second Rebuttal Schedule 4.1	Scenario 2 - Undiscounted Lost Profits: In-house Model (2 Year X/Xi Delay)
Second Rebuttal Schedule 4.2	Scenario 2 - Lost EndoWrist Repair Units (2 Year X/Xi Delay)
Second Rebuttal Schedule 4.3	Scenario 2 - Discounted Lost Profits: In-house Model (1 Year X/Xi Delay)
Second Rebuttal Schedule 4.4	Scenario 2 - Undiscounted Lost Profits: In-house Model (1 Year X/Xi Delay)
Second Rebuttal Schedule 4.5	Scenario 2 - Lost EndoWrist Repair Units (1 Year X/Xi Delay)
Second Rebuttal Schedule 5.0	Scenario 2 - Discounted Lost Profits: Distributor Model (2 Year X/Xi Delay)
Second Rebuttal Schedule 5.1	Scenario 2 - Undiscounted Lost Profits: Distributor Model (2 Year X/Xi Delay)
Second Rebuttal Schedule 5.2	Scenario 2 - Discounted Lost Profits: Distributor Model (1 Year X/Xi Delay)
Second Rebuttal Schedule 5.3	Scenario 2 - Undiscounted Lost Profits: Distributor Model (1 Year X/Xi Delay)
Second Rebuttal Schedule 6.0	Intuitive's U.S. EndoWrist Instrument Units - Actual and Forecasted: 2014 - 2025
Second Rebuttal Schedule 7.0	Estimated EndoWrist Expiration Rates: 2018 - 2021
Second Rebuttal Schedule 8.0	Potential EndoWrist Instrument Units, Net Sales Dollars and Average Selling Price by System (Using Intuitive Sales Volumes and September 2019 Vizient Amended Agreement Prices): 2018 - June 2022
Second Rebuttal Schedule 8.1	Potential EndoWrist Instrument Units, Net Sales Dollars and ASP by Product (Instrument Number) - da Vinci S/Si (Using Intuitive Sales Volumes and September 2019 Vizient Amended Agreement Prices): 2018 - June 2022
Second Rebuttal Schedule 8.2	Potential EndoWrist Instrument Units, Net Sales Dollars and ASP by Product (Instrument Number) - da Vinci X/Xi (Using Intuitive Sales Volumes and September 2019 Vizient Amended Agreement Prices): 2018 - June 2022
Second Rebuttal Schedule 9.0	SIS's Estimated EndoWrist Instrument Repair Cost: 2020 - June 2022
Second Rebuttal Schedule 9.1	Intuitive's "Top 5" X/Xi EndoWrist Instrument Units: 2018 - June 2022

# Second Rebuttal Schedules Index

Schedule #	Title
Second Rebuttal Schedule 10.0	SIS's Estimated Interceptor Chip Cost (Based on Rebotix's Sales to Restore)
Second Rebuttal Schedule 10.1	Rebotix Sales to SIS: June 27, 2019 - November 21, 2019
Second Rebuttal Schedule 11.0	Potential EndoWrist Instrument Units, Costs and Costs per Unit by System (Using Intuitive Sales Volumes and Rebotix Pricing): 2018 - June 2022
Second Rebuttal Schedule 11.1	Potential EndoWrist Instrument Units, Costs and Costs per Unit by Product (Instrument Number) - da Vinci S/Si (Using Intuitive Sales Volumes and Rebotix Pricing): 2018 - June 2022
Second Rebuttal Schedule 11.2	Potential EndoWrist Instrument Units, Costs and Costs per Unit by Product (Instrument Number) - da Vinci X/Xi (Using Intuitive Sales Volumes and Rebotix Pricing): 2018 - June 2022
Second Rebuttal Schedule 12.0	SIS's EndoWrist Instrument Sales Prices and Costs (from Rebotix) - da Vinci S/Si
Second Rebuttal Schedule 12.1	SIS's EndoWrist Instrument Sales Prices and Costs (from Rebotix) - da Vinci X/Xi
Second Rebuttal Schedule 12.2	SIS's EndoWrist Instrument Sale Price vs Intuitive Sales Price - da Vinci S/Si
Second Rebuttal Schedule 13.0	Intuitive's EndoWrist Instrument Units, Net Sales Dollars and Average Selling Price by System: 2014 - June 2022
Second Rebuttal Schedule 13.1	Intuitive's EndoWrist Instrument Units and Net Sales Dollars by Product (Instrument Number) - da Vinci S/Si: 2014 - June 2022
Second Rebuttal Schedule 13.2	Intuitive's EndoWrist Instrument Units and Net Sales Dollars by Product (Instrument Number) - da Vinci X/Xi: 2014 - June 2022
Second Rebuttal Schedule 14.0	SIS's EndoWrist Instrument Repair Summary
Second Rebuttal Schedule 15.0	SIS's Financial Statements: 2019 - October 2021
Second Rebuttal Schedule 15.1	SIS's Detailed SGA: 2019 - October 2021
Second Rebuttal Schedule 16.0	Intuitive EndoWrist Instrument Average Selling Price, Units and Net Sales Dollars: 2020 - 2025
Second Rebuttal Schedule 16.1	Lanham Act Based on Scenario 2 - Unenforceable Contracts(2 Year X/Xi Delay): 2020 - 2025
Second Rebuttal Schedule 16.2	Lanham Act Based on Scenario 2 - Unenforceable Contracts(1 Year X/Xi Delay): 2020 - 2025

# Damages Summary

## Second Rebuttal Schedule 1.0

	2020	2021	2022	2023	2024 (discounted)	2025 (discounted)	Total
<b>Lost profits</b>							
<u>Scenario 1 - Illegal Encryption</u>							
<u>[A] In-house model</u>							
	\$6,235,557	\$21,765,377	\$30,999,702	\$35,400,982	\$28,213,690	\$8,767,326	\$131,382,634
<u>[B] Distributor model</u>							
	\$5,573,947	\$19,392,500	\$27,440,979	\$31,335,614	\$24,973,286	\$7,760,334	\$116,476,660
<u>Scenario 2 - Unenforceable Contracts</u>							
<u>2 Year X/Xi delay</u>							
<u>[C] In-house model</u>							
	\$958,569	\$1,359,572	\$7,179,842	\$25,377,682	\$28,213,690	\$8,767,326	\$71,856,681
<u>[D] Distributor model</u>							
	\$837,634	\$1,179,972	\$6,357,184	\$22,463,639	\$24,973,286	\$7,760,334	\$63,572,049
<u>1 Year X/Xi delay</u>							
<u>[E] In-house model</u>							
	\$958,569	\$7,481,387	\$22,338,002	\$35,400,982	\$28,213,690	\$8,767,326	\$103,159,956
<u>[F] Distributor model</u>							
	\$837,634	\$6,643,796	\$19,774,204	\$31,335,614	\$24,973,286	\$7,760,334	\$91,324,868
<b>Lanham Act</b>							
<u>[G] Scenario 2 - 2 year X/Xi delay</u>							
	\$3,274,156	\$4,775,564	\$25,742,312	\$91,369,970	\$101,623,818	\$31,582,076	\$258,367,896
<u>[H] Scenario 2 - 1 year X/Xi delay</u>							
	\$3,274,156	\$26,905,717	\$80,352,656	\$127,480,940	\$101,623,818	\$31,582,076	\$371,219,363

### NOTES / SOURCES:

Note: Any minor differences are due to rounding.

- [A] Per Second Rebuttal Schedule 2.0.
- [B] Per Second Rebuttal Schedule 3.0.
- [C] Per Second Rebuttal Schedule 4.0.
- [D] Per Second Rebuttal Schedule 5.0.
- [E] Per Second Rebuttal Schedule 4.3.
- [F] Per Second Rebuttal Schedule 5.2.
- [G] Per Second Rebuttal Schedule 16.1.
- [H] Per Second Rebuttal Schedule 16.2.

# Scenario 1 - Discounted Lost Profits: In-house Model

## Second Rebuttal Schedule 2.0

	2020	2021	2022	2023	2024	2025	Total
<b><u>Lost EndoWrist repair units</u></b>							
[A] da Vinci S/Si	1,273	1,796	921	431	170	35	4,626
[B] da Vinci X/Xi	7,209	27,763	40,968	47,407	40,179	14,008	177,534
[C] Total	8,482	29,559	41,889	47,838	40,349	14,043	182,160
<b><u>Lost revenues</u></b>							
[A] da Vinci S/Si	\$1,829,301	\$2,605,996	\$1,320,714	\$618,054	\$243,780	\$50,190	\$6,668,035
[B] da Vinci X/Xi	\$10,193,526	\$39,562,275	\$58,666,176	\$67,886,824	\$57,536,328	\$20,059,456	\$253,904,585
[C] Total	\$12,022,827	\$42,168,271	\$59,986,890	\$68,504,878	\$57,780,108	\$20,109,646	\$260,572,620
<b><u>Incremental costs</u></b>							
[A] da Vinci S/Si	\$870,732	\$1,246,424	\$637,332	\$298,252	\$117,640	\$24,220	\$3,194,600
[B] da Vinci X/Xi	\$4,916,538	\$19,156,470	\$28,349,856	\$32,805,644	\$27,803,868	\$9,693,536	\$122,725,912
[C] Total	\$5,787,270	\$20,402,894	\$28,987,188	\$33,103,896	\$27,921,508	\$9,717,756	\$125,920,512
<b><u>Lost profits (undiscounted)</u></b>							
[A] da Vinci S/Si	\$958,569	\$1,359,572	\$683,382	\$319,802	\$126,140	\$25,970	\$3,473,435
[B] da Vinci X/Xi	\$5,276,988	\$20,405,805	\$30,316,320	\$35,081,180	\$29,732,460	\$10,365,920	\$131,178,673
[C] Total	\$6,235,557	\$21,765,377	\$30,999,702	\$35,400,982	\$29,858,600	\$10,391,890	\$134,652,108
[D] Discount %					12%	12%	
[E] Discount period					0.5	1.5	
[F] Discount factor	1.00000	1.00000	1.00000	1.00000	0.94491	0.84367	
[G] Discounted lost profits	\$6,235,557	\$21,765,377	\$30,999,702	\$35,400,982	\$28,213,690	\$8,767,326	\$131,382,634

### NOTES / SOURCES:

Note: Any minor differences are due to rounding.

[A] Per Second Rebuttal Schedule 2.1.

[B] Per Second Rebuttal Schedule 2.1.

[C] = [A] + [B]

[D] For the GICS 35101010, Health Care Equipment & Supplies, Duff and Phelps - Cost of Capital Composite, September 30, 2022, the average SIC/GICS Composite WACC (weighted average cost of capital) is 9.2% and median WACC is 8.9%. For the small composite, the WACC is 11.1% to 11.2% (CRSP Decile). For purposes of my analysis I use 12%, which is conservative. Note: The projections after 2022 do not include growth, therefore the discount rate would likely be less.

[E] Calculated using the mid-year convention to January 1, 2024, the approximate date of trial.

[F] = (1 + [H]) ^ - [I], rounded to 5 decimals.

[G] = Lost profits (undiscounted) per [C] \* [F]

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# Scenario 1 - Undiscounted Lost Profits: In-house Model

## Second Rebuttal Schedule 2.1

	2020	2021	2022	2023	2024	2025	Total
<b>da Vinci S/Si</b>							
[A] Lost EndoWrist repair units	1,273	1,796	921	431	170	35	4,626
<u>Per unit</u>							
[B] Average selling price	\$1,437	\$1,451	\$1,434	\$1,434	\$1,434	\$1,434	\$1,441
<u>Incremental costs per unit</u>							
[C] Repair costs	\$148	\$155	\$156	\$156	\$156	\$156	\$153
[D] Chip costs	\$350	\$350	\$350	\$350	\$350	\$350	\$350
[E] Vizient admin fees - % of sales	4%	\$57	\$58	\$57	\$57	\$57	\$57
[F] Additional SGA - % of sales	9%	\$129	\$131	\$129	\$129	\$129	\$130
[G] Total incremental costs		\$684	\$694	\$692	\$692	\$692	\$691
[H] Lost profits per unit		\$753	\$757	\$742	\$742	\$742	\$751
[I] Lost revenues		\$1,829,301	\$2,605,996	\$1,320,714	\$618,054	\$243,780	\$50,190
<u>Incremental costs</u>							
[J] Repair costs	\$188,404	\$278,380	\$143,676	\$67,236	\$26,520	\$5,460	\$709,676
[K] Chip costs	\$445,550	\$628,600	\$322,350	\$150,850	\$59,500	\$12,250	\$1,619,100
[L] Vizient admin fees - 4% of sales		\$72,561	\$104,168	\$52,497	\$24,567	\$9,690	\$1,995
[M] Additional SGA - % of sales		\$164,217	\$235,276	\$118,809	\$55,599	\$21,930	\$4,515
[N] Total incremental costs		\$870,732	\$1,246,424	\$637,332	\$298,252	\$117,640	\$24,220
[O] Lost profits - undiscounted		<b>\$958,569</b>	<b>\$1,359,572</b>	<b>\$683,382</b>	<b>\$319,802</b>	<b>\$126,140</b>	<b>\$25,970</b>
<b>da Vinci X/Xi</b>							
[A] Lost EndoWrist repair units	7,209	27,763	40,968	47,407	40,179	14,008	177,534
<u>Per unit</u>							
[B] Average selling price	\$1,414	\$1,425	\$1,432	\$1,432	\$1,432	\$1,432	\$1,430
<u>Incremental costs per unit</u>							
[C] Repair costs	\$148	\$155	\$156	\$156	\$156	\$156	\$156
[D] Chip costs	\$350	\$350	\$350	\$350	\$350	\$350	\$350
[E] Vizient admin fees - % of sales	4%	\$57	\$57	\$57	\$57	\$57	\$57
[F] Additional SGA - % of sales	9%	\$127	\$128	\$129	\$129	\$129	\$129
[G] Total incremental costs		\$682	\$690	\$692	\$692	\$692	\$691
[H] Lost profits per unit		\$732	\$735	\$740	\$740	\$740	\$739
[I] Lost revenues		\$10,193,526	\$39,562,275	\$58,666,176	\$67,886,824	\$57,536,328	\$20,059,456
<u>Incremental costs</u>							
[J] Repair costs	\$1,066,932	\$4,303,265	\$6,391,008	\$7,395,492	\$6,267,924	\$2,185,248	\$27,609,869
[K] Chip costs	\$2,523,150	\$9,717,050	\$14,338,800	\$16,592,450	\$14,062,650	\$4,902,800	\$62,136,900
[L] Vizient admin fees - 4% of sales		\$410,913	\$1,582,491	\$2,335,176	\$2,702,199	\$2,290,203	\$798,456
[M] Additional SGA - % of sales		\$915,543	\$3,553,664	\$5,284,872	\$6,115,503	\$5,183,091	\$1,807,032
[N] Total incremental costs		\$4,916,538	\$19,156,470	\$28,349,856	\$32,805,644	\$27,803,868	\$9,693,536
[O] Lost profits - undiscounted		<b>\$5,276,988</b>	<b>\$20,405,805</b>	<b>\$30,316,320</b>	<b>\$35,081,180</b>	<b>\$29,732,460</b>	<b>\$10,365,920</b>
							<b>\$131,178,673</b>

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# Scenario 1 - Undiscounted Lost Profits: In-house Model

## Second Rebuttal Schedule 2.1

### NOTES / SOURCES:

Note: Any minor differences are due to rounding.

- [A] Per Second Rebuttal Schedule 2.2.
- [B] Per Second Rebuttal Schedule 8.0. For purposes of my analysis, the ASP after 2022 is the same as 2022.
- [C] Per Second Rebuttal Schedule 9.0. For purposes of my analysis, the cost per unit after 2022 is the same as 2022.
- [D] Per Second Rebuttal Schedule 10.0.
- [E] = [B] \* 4%. Per SIS169233-169280 at 238-239, SIS would have paid Vizient a GPO administrative fee of 4% of net sales. Per SIS319315, SIS would have paid Yankee a 3% administrative fee. SIS would not have paid an administrative fee for non-Vizient and non-Yankee customers. For purposes of my analysis, I assume all sales would have been subject to a 4% administrative fee, consistent with the Vizient Agreement.
- [F] = [B] \* 9% per Second Rebuttal Schedule 15.1.
- [G] = [C] + [D] + [E] + [F]
- [H] = [B] - [G]
- [I] = [A] \* [B]
- [J] = [A] \* [C]
- [K] = [A] \* [D]
- [L] = [A] \* [E]
- [M] = [A] \* [F]
- [N] = [J] + [K] + [L] + [M]
- [O] = [I] - [N]

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# Scenario 1 - Lost EndoWrist Repair Units

## Second Rebuttal Schedule 2.2

	2020	2021	2022	2023	2024	2025	Total
<b><u>EndoWrist instruments potentially repairable by SIS - units</u></b>							
[A] da Vinci S/Si	52,970	22,411	8,214	3,839	1,928	1,077	90,439
[A] da Vinci X/Xi	299,954	346,579	365,304	422,719	455,982	437,186	2,327,724
[A] Total	<b>352,924</b>	<b>368,990</b>	<b>373,518</b>	<b>426,558</b>	<b>457,910</b>	<b>438,263</b>	<b>2,418,163</b>
[B] Expiration rate of new sales units	60%	60%	60%	60%	60%	60%	60%
<b><u>Expired EndoWrist instrument - units</u></b>							
[C] da Vinci S/Si	31,782	13,447	4,928	2,303	1,157	646	54,263
[C] da Vinci X/Xi	179,972	207,947	219,182	253,631	273,589	262,312	1,396,633
[C] Total	<b>211,754</b>	<b>221,394</b>	<b>224,110</b>	<b>255,934</b>	<b>274,746</b>	<b>262,958</b>	<b>1,450,896</b>
[D] SIS market share rate	55%	55%	55%	55%	55%	55%	55%
<b><u>SIS market share units</u></b>							
[E] da Vinci S/Si	17,480	7,396	2,710	1,267	636	355	29,844
[E] da Vinci X/Xi	98,985	114,371	120,550	139,497	150,474	144,272	768,149
[E] Total	<b>116,465</b>	<b>121,767</b>	<b>123,260</b>	<b>140,764</b>	<b>151,110</b>	<b>144,627</b>	<b>797,993</b>
<b><u>SIS conversion factor</u></b>							
[F] da Vinci S/Si	15%	50%	70%	70%	70%	70%	70%
[F] da Vinci X/Xi	15%	50%	70%	70%	70%	70%	70%
<b><u>SIS converted units</u></b>							
[G] da Vinci S/Si	2,622	3,698	1,897	887	445	249	9,798
[G] da Vinci X/Xi	14,848	57,186	84,385	97,648	105,332	100,990	460,389
[G] Total	<b>17,470</b>	<b>60,884</b>	<b>86,282</b>	<b>98,535</b>	<b>105,777</b>	<b>101,239</b>	<b>470,187</b>
[H] Collection rate of SIS converted units	70%	70%	70%	70%	70%	70%	70%
<b><u>SIS collected units</u></b>							
[I] da Vinci S/Si	1,835	2,589	1,328	621	312	174	6,859
[I] da Vinci X/Xi	10,394	40,030	59,070	68,354	73,732	70,693	322,273
[I] Total	<b>12,229</b>	<b>42,619</b>	<b>60,398</b>	<b>68,975</b>	<b>74,044</b>	<b>70,867</b>	<b>329,132</b>
[J] Repair yield of SIS would-have-been units	69.35%	69.35%	69.35%	69.35%	69.35%	69.35%	69.35%
<b><u>Would-have-been Lost EndoWrist repair units</u></b>							
[K] da Vinci S/Si	1,273	1,796	921	431	216	121	4,758
[K] da Vinci X/Xi	7,209	27,763	40,968	47,407	51,137	49,029	223,513
[K] Total	<b>8,482</b>	<b>29,559</b>	<b>41,889</b>	<b>47,838</b>	<b>51,353</b>	<b>49,150</b>	<b>228,271</b>
[L] Market penetration (% of total units)	2%	8%	11%	11%	11%	11%	9%

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# Scenario 1 - Lost EndoWrist Repair Units

## Second Rebuttal Schedule 2.2

	2020	2021	2022	2023	2024	2025	Total
<b><u>Actual conversion rate</u></b>							
[M] da Vinci S/Si					15%	50%	
[M] da Vinci X/Xi					15%	50%	
<b><u>Actual EndoWrist repair units</u></b>							
[N] da Vinci S/Si				46	86	132	
[N] da Vinci X/Xi				10,958	35,021	45,979	
[N] Total				<b>11,004</b>	<b>35,107</b>	<b>46,111</b>	
<b><u>Lost EndoWrist repair units</u></b>							
[O] da Vinci S/Si	1,273	1,796	921	431	170	35	4,626
[O] da Vinci X/Xi	7,209	27,763	40,968	47,407	40,179	14,008	177,534
[O] Total	<b>8,482</b>	<b>29,559</b>	<b>41,889</b>	<b>47,838</b>	<b>40,349</b>	<b>14,043</b>	<b>182,160</b>

### NOTES / SOURCES:

Note: Any minor differences are due to rounding.

[A] Per Second Rebuttal Schedule 6.0.

[B] Per Second Rebuttal Schedule 7.0.

[C] = [A] \* [B]

[D] Per <https://web.archive.org/web/20191108191050/https://www.vizientinc.com/what-we-do> as of November 8, 2019, "50% of the nation's acute care providers are Vizient members." Per <https://www.vizientinc.com/> as of November 29, 2022, Vizient has ">60% of acute care hospitals in the U.S." For purposes of my analysis, I use 55%. See discussion in my report.

[E] = [C] \* [D]

[F] Per discussion with Keith Johnson and Greg Posdal, SIS anticipated a quick ramp up in 2020, both in sales and in-house repair capabilities. According to Jean Sargent there would have been a transition timeframe conversion for this type of program. In 2020, or Year 1, 30% of Vizient's acute care providers would have reasonably converted. In 2021, or Year 2, and thereafter, 70% would have reasonably converted. I apply a 15% conversion factor in 2020, or Year 1 (i.e. mid-point between 0% January 1 and 30% December 31st). I apply a 50% conversion factor in 2021, or Year 2 (i.e., mid-point between 30% January 1 and 70% December 31st). I apply a 70% conversion factor in 2022, or Year 3, and thereafter. Per May Dep. 113-114 (November 3, 2022), if the Xi had the same security measures as the Si, Restore would have been able to repair the Xi's as of January 2020.

[G] = [E] \* [F]

[H] Per Morales 30(b)(6) Dep. Ex. 143 (Intuitive-00626597-626616 at 604), where Intuitive targets a collection rate of 70%. See also, Intuitive-00620200 where Intuitive assumes a collection rate of 70%. See also, Morales 30(b)(6)Dep. Ex. 141 (at pdf page 1), where Intuitive targets a collection rate of 80%. Per discussion with Jean Sargent, I understand for an expensive instrument such as an EndoWrist, a 75% collection rate would be reasonable.

[I] = [G] \* [H]

[J] Deposition of Clifton Parker 43-45, 178-179 (October 25, 2022). Per Restore-00094918-00094956 at 922 (Parker Dep. Ex. 121), 215 out of 310 instruments (approximately 69.35%) collected in a 2-week sample that had lives on them passed Restore's inspection (i.e., were repairable). Note: Per Morales 30(b)(6) Dep. Ex. 143 (Intuitive-00626597-626616 at 609), where Intuitive realized a yield of 85%. See also, Morales 30(b)(6) Dep. Ex. 143 (Intuitive-00626597-626616 at 612), where Intuitive targeted a yield of 85% to 95%. Second Rebuttal Schedule 14.0 shows the repair yield of SIS collectable units was approximately 88%. For purposes of my analysis, I use approximately 69.35%.

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# Scenario 1 - Lost EndoWrist Repair Units

## Second Rebuttal Schedule 2.2

2020	2021	2022	2023	2024	2025	Total
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[K] = [I] \* [J]

[L] = [K] / [A]

[M] Assuming trial is resolved in or about January 1, 2024, SIS would then begin ramping up. For the Actual EndoWrist repair units, I use the Year 1, Year 2 and Year 3 market conversion rates addressed at [F] above. Currently, I assume Year 1 is 2024 and the first year SIS will begin selling its repair program again. Per May Dep. 60 (November 3, 2022), Restore will have the technical capability to change the usage limitations of the EndoWrist X/Xi's in the third or fourth quarter of 2023. For purposes of this analysis, I assume the conversion rate for the S/Si and X/Xi would be the same starting January 1, 2024.

[N] = [E] \* [H] \* [J] \* [M]

[O] = [K] - [N]

# Scenario 1 - Discounted Lost Profits: Distributor Model

## Second Rebuttal Schedule 3.0

	2020	2021	2022	2023	2024	2025	Total
<b><u>Lost EndoWrist repair units</u></b>							
[A] da Vinci S/Si	1,273	1,796	921	431	170	35	4,626
[B] da Vinci X/Xi	7,209	27,763	40,968	47,407	40,179	14,008	177,534
[C] Total	8,482	29,559	41,889	47,838	40,349	14,043	182,160
<b><u>Lost revenues</u></b>							
[A] da Vinci S/Si	\$1,829,301	\$2,605,996	\$1,320,714	\$618,054	\$243,780	\$50,190	\$6,668,035
[B] da Vinci X/Xi	\$10,193,526	\$39,562,275	\$58,666,176	\$67,886,824	\$57,536,328	\$20,059,456	\$253,904,585
[C] Total	\$12,022,827	\$42,168,271	\$59,986,890	\$68,504,878	\$57,780,108	\$20,109,646	\$260,572,620
<b><u>Incremental costs</u></b>							
[A] da Vinci S/Si	\$991,667	\$1,426,024	\$713,775	\$334,025	\$131,750	\$27,125	\$3,624,366
[B] da Vinci X/Xi	\$5,457,213	\$21,349,747	\$31,832,136	\$36,835,239	\$31,219,083	\$10,884,216	\$137,577,634
[C] Total	\$6,448,880	\$22,775,771	\$32,545,911	\$37,169,264	\$31,350,833	\$10,911,341	\$141,202,000
<b><u>Lost profits (undiscounted)</u></b>							
[A] da Vinci S/Si	\$837,634	\$1,179,972	\$606,939	\$284,029	\$112,030	\$23,065	\$3,043,669
[B] da Vinci X/Xi	\$4,736,313	\$18,212,528	\$26,834,040	\$31,051,585	\$26,317,245	\$9,175,240	\$116,326,951
[C] Total	\$5,573,947	\$19,392,500	\$27,440,979	\$31,335,614	\$26,429,275	\$9,198,305	\$119,370,620
[D] Discount %					12%	12%	
[E] Discount period					0.5	1.5	
[F] Discount factor	1.00000	1.00000	1.00000	1.00000	0.94491	0.84367	
[G] Discounted lost profits	\$5,573,947	\$19,392,500	\$27,440,979	\$31,335,614	\$24,973,286	\$7,760,334	\$116,476,660

### NOTES / SOURCES:

Note: Any minor differences are due to rounding.

[A] Per Second Rebuttal Schedule 3.1.

[B] Per Second Rebuttal Schedule 3.1.

[C] = [A] + [B]

[D] For the GICS 35101010, Health Care Equipment & Supplies, Duff and Phelps - Cost of Capital Composite, September 30, 2022, the average SIC/GICS Composite WACC (weighted average cost of capital) is 9.2% and median WACC is 8.9%. For the small composite, the WACC is 11.1% to 11.2% (CRSP Decile). For purposes of my analysis I use 12%, which is conservative. Note: The projections after 2022 do not include growth, therefore the discount rate would likely be less.

[E] Calculated using the mid-year convention to January 1, 2024, the approximate date of trial.

[F] = (1 + [H]) ^ - [I], rounded to 5 decimals.

[G] = Lost profits (undiscounted) per [C] \* [F]

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# Scenario 1 - Undiscounted Lost Profits: Distributor Model

## Second Rebuttal Schedule 3.1

	2020	2021	2022	2023	2024	2025	Total	
<b>da Vinci S/Si</b>								
[A] Lost EndoWrist repair units		1,273	1,796	921	431	170	35	4,626
<u>Per unit</u>								
[B] Average selling price		\$1,437	\$1,451	\$1,434	\$1,434	\$1,434	\$1,441	
<u>Incremental costs per unit</u>								
[C] Repair costs (including chip costs)		\$593	\$605	\$589	\$589	\$589	\$589	\$596
[D] Vizient admin fees - % of sales	4%	\$57	\$58	\$57	\$57	\$57	\$57	\$57
[E] Additional SGA - % of sales	9%	\$129	\$131	\$129	\$129	\$129	\$129	\$130
[F] Total incremental costs		\$779	\$794	\$775	\$775	\$775	\$783	
[G] Lost profits per unit		\$658	\$657	\$659	\$659	\$659	\$659	\$658
[H] Lost revenues		\$1,829,301	\$2,605,996	\$1,320,714	\$618,054	\$243,780	\$50,190	\$6,668,035
<u>Incremental costs</u>								
[I] Repair costs (including chip costs)		\$754,889	\$1,086,580	\$542,469	\$253,859	\$100,130	\$20,615	\$2,758,542
[J] Vizient admin fees - 4% of sales		\$72,561	\$104,168	\$52,497	\$24,567	\$9,690	\$1,995	\$265,478
[K] Additional SGA - % of sales		\$164,217	\$235,276	\$118,809	\$55,599	\$21,930	\$4,515	\$600,346
[L] Total incremental costs		\$991,667	\$1,426,024	\$713,775	\$334,025	\$131,750	\$27,125	\$3,624,366
<b>[M] Lost profits - undiscounted</b>		<b>\$837,634</b>	<b>\$1,179,972</b>	<b>\$606,939</b>	<b>\$284,029</b>	<b>\$112,030</b>	<b>\$23,065</b>	<b>\$3,043,669</b>
<b>da Vinci X/Xi</b>								
[A] Lost EndoWrist repair units		7,209	27,763	40,968	47,407	40,179	14,008	177,534
<u>Per unit</u>								
[B] Average selling price		\$1,414	\$1,425	\$1,432	\$1,432	\$1,432	\$1,432	\$1,430
<u>Incremental costs per unit</u>								
[C] Repair costs (including chip costs)		\$573	\$584	\$591	\$591	\$591	\$591	\$589
[D] Vizient admin fees - % of sales	4%	\$57	\$57	\$57	\$57	\$57	\$57	\$57
[E] Additional SGA - % of sales	9%	\$127	\$128	\$129	\$129	\$129	\$129	\$129
[F] Total incremental costs		\$757	\$769	\$777	\$777	\$777	\$777	\$775
[G] Lost profits per unit		\$657	\$656	\$655	\$655	\$655	\$655	\$655
[H] Lost revenues		\$10,193,526	\$39,562,275	\$58,666,176	\$67,886,824	\$57,536,328	\$20,059,456	\$253,904,585
<u>Incremental costs</u>								
[I] Repair costs (including chip costs)		\$4,130,757	\$16,213,592	\$24,212,088	\$28,017,537	\$23,745,789	\$8,278,728	\$104,598,491
[J] Vizient admin fees - 4% of sales		\$410,913	\$1,582,491	\$2,335,176	\$2,702,199	\$2,290,203	\$798,456	\$10,119,438
[K] Additional SGA - % of sales		\$915,543	\$3,553,664	\$5,284,872	\$6,115,503	\$5,183,091	\$1,807,032	\$22,859,705
[L] Total incremental costs		\$5,457,213	\$21,349,747	\$31,832,136	\$36,835,239	\$31,219,083	\$10,884,216	\$137,577,634
<b>[M] Lost profits - undiscounted</b>		<b>\$4,736,313</b>	<b>\$18,212,528</b>	<b>\$26,834,040</b>	<b>\$31,051,585</b>	<b>\$26,317,245</b>	<b>\$9,175,240</b>	<b>\$116,326,951</b>

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# Scenario 1 - Undiscounted Lost Profits: Distributor Model

## Second Rebuttal Schedule 3.1

### NOTES / SOURCES:

Note: Any minor differences are due to rounding.

- [A] Per Second Rebuttal Schedule 2.2.
- [B] Per Second Rebuttal Schedule 8.0. For purposes of my analysis, the ASP after 2022 is the same as 2022.
- [C] Per Second Rebuttal Schedule 11.0. For purposes of my analysis, the cost per unit after 2022 is the same as 2022.
- [D] = [B] \* 4%. Per SIS169233-169280 at 238-239, SIS would have paid Vizient a GPO administrative fee of 4% of net sales. Per SIS319315, SIS would have paid Yankee a 3% administrative fee. SIS would not have paid an administrative fee for non-Vizient and non-Yankee customers. For purposes of my analysis, I assume all sales would have been subject to a 4% administrative fee, consistent with the Vizient Agreement.
- [E] = [B] \* 9% per Second Rebuttal Schedule 15.1.
- [F] = [C] + [D] + [E]
- [G] = [B] - [F]
- [H] = [A] \* [B]
- [I] = [A] \* [C]
- [J] = [A] \* [D]
- [K] = [A] \* [E]
- [L] = [I] + [J] + [K]
- [M] = [H] - [L]

# Scenario 2 - Discounted Lost Profits: In-house Model (2 Year X/Xi Delay) Second Rebuttal Schedule 4.0

	2020	2021	2022	2023	2024	2025	Total
<b><u>Lost EndoWrist repair units</u></b>							
[A] da Vinci S/Si	1,273	1,796	921	431	170	35	4,626
[B] da Vinci X/Xi	0	0	8,779	33,862	40,179	14,008	96,828
[C] Total	1,273	1,796	9,700	34,293	40,349	14,043	101,454
<b><u>Lost revenues</u></b>							
[A] da Vinci S/Si	\$1,829,301	\$2,605,996	\$1,320,714	\$618,054	\$243,780	\$50,190	\$6,668,035
[B] da Vinci X/Xi	\$0	\$0	\$12,571,528	\$48,490,384	\$57,536,328	\$20,059,456	\$138,657,696
[C] Total	\$1,829,301	\$2,605,996	\$13,892,242	\$49,108,438	\$57,780,108	\$20,109,646	\$145,325,731
<b><u>Incremental costs</u></b>							
[A] da Vinci S/Si	\$870,732	\$1,246,424	\$637,332	\$298,252	\$117,640	\$24,220	\$3,194,600
[B] da Vinci X/Xi	\$0	\$0	\$6,075,068	\$23,432,504	\$27,803,868	\$9,693,536	\$67,004,976
[C] Total	\$870,732	\$1,246,424	\$6,712,400	\$23,730,756	\$27,921,508	\$9,717,756	\$70,199,576
<b><u>Lost profits (undiscounted)</u></b>							
[A] da Vinci S/Si	\$958,569	\$1,359,572	\$683,382	\$319,802	\$126,140	\$25,970	\$3,473,435
[B] da Vinci X/Xi	\$0	\$0	\$6,496,460	\$25,057,880	\$29,732,460	\$10,365,920	\$71,652,720
[C] Total	\$958,569	\$1,359,572	\$7,179,842	\$25,377,682	\$29,858,600	\$10,391,890	\$75,126,155
[D] Discount %					12%	12%	
[E] Discount period					0.5	1.5	
[F] Discount factor	1.00000	1.00000	1.00000	1.00000	0.94491	0.84367	
[G] Discounted lost profits	\$958,569	\$1,359,572	\$7,179,842	\$25,377,682	\$28,213,690	\$8,767,326	\$71,856,681

## NOTES / SOURCES:

Note: Any minor differences are due to rounding.

[A] Per Second Rebuttal Schedule 4.1.

[B] Per Second Rebuttal Schedule 4.1.

[C] = [A] + [B]

[D] For the GICS 35101010, Health Care Equipment & Supplies, Duff and Phelps - Cost of Capital Composite, September 30, 2022, the average SIC/GICS Composite WACC (weighted average cost of capital) is 9.2% and median WACC is 8.9%. For the small composite, the WACC is 11.1% to 11.2% (CRSP Decile). For purposes of my analysis I use 12%, which is conservative. Note: The projections after 2022 do not include growth, therefore the discount rate would likely be less.

[E] Calculated using the mid-year convention to January 1, 2024, the approximate date of trial.

[F] = (1 + [H]) ^ - [I], rounded to 5 decimals.

[G] = Lost profits (undiscounted) per [C] \* [F]

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## Scenario 2 - Undiscounted Lost Profits: In-house Model (2 Year X/Xi Delay) Second Rebuttal Schedule 4.1

	2020	2021	2022	2023	2024	2025	Total
<b>da Vinci S/Si</b>							
[A] Lost EndoWrist repair units	1,273	1,796	921	431	170	35	4,626
<u>Per unit</u>							
[B] Average selling price	\$1,437	\$1,451	\$1,434	\$1,434	\$1,434	\$1,434	\$1,441
<u>Incremental costs per unit</u>							
[C] Repair costs	\$148	\$155	\$156	\$156	\$156	\$156	\$153
[D] Chip costs	\$350	\$350	\$350	\$350	\$350	\$350	\$350
[E] Vizient admin fees - % of sales	4%	\$57	\$58	\$57	\$57	\$57	\$57
[F] Additional SGA - % of sales	9%	\$129	\$131	\$129	\$129	\$129	\$130
[G] Total incremental costs		\$684	\$694	\$692	\$692	\$692	\$691
[H] Lost profits per unit		\$753	\$757	\$742	\$742	\$742	\$751
[I] Lost revenues		\$1,829,301	\$2,605,996	\$1,320,714	\$618,054	\$243,780	\$50,190
<u>Incremental costs</u>							
[J] Repair costs	\$188,404	\$278,380	\$143,676	\$67,236	\$26,520	\$5,460	\$709,676
[K] Chip costs	\$445,550	\$628,600	\$322,350	\$150,850	\$59,500	\$12,250	\$1,619,100
[L] Vizient admin fees - 4% of sales		\$72,561	\$104,168	\$52,497	\$24,567	\$9,690	\$1,995
[M] Additional SGA - % of sales		\$164,217	\$235,276	\$118,809	\$55,599	\$21,930	\$4,515
[N] Total incremental costs		\$870,732	\$1,246,424	\$637,332	\$298,252	\$117,640	\$24,220
[O] Lost profits - undiscounted		<b>\$958,569</b>	<b>\$1,359,572</b>	<b>\$683,382</b>	<b>\$319,802</b>	<b>\$126,140</b>	<b>\$25,970</b>
<b>da Vinci X/Xi</b>							
[A] Lost EndoWrist repair units	0	0	8,779	33,862	40,179	14,008	96,828
<u>Per unit</u>							
[B] Average selling price	\$1,414	\$1,425	\$1,432	\$1,432	\$1,432	\$1,432	\$1,432
<u>Incremental costs per unit</u>							
[C] Repair costs	\$148	\$155	\$156	\$156	\$156	\$156	\$156
[D] Chip costs	\$350	\$350	\$350	\$350	\$350	\$350	\$350
[E] Vizient admin fees - % of sales	4%	\$57	\$57	\$57	\$57	\$57	\$57
[F] Additional SGA - % of sales	9%	\$127	\$128	\$129	\$129	\$129	\$129
[G] Total incremental costs		\$682	\$690	\$692	\$692	\$692	\$692
[H] Lost profits per unit		\$732	\$735	\$740	\$740	\$740	\$740
[I] Lost revenues		\$0	\$0	\$12,571,528	\$48,490,384	\$57,536,328	\$20,059,456
<u>Incremental costs</u>							
[J] Repair costs	\$0	\$0	\$1,369,524	\$5,282,472	\$6,267,924	\$2,185,248	\$15,105,168
[K] Chip costs	\$0	\$0	\$3,072,650	\$11,851,700	\$14,062,650	\$4,902,800	\$33,889,800
[L] Vizient admin fees - 4% of sales		\$0	\$0	\$500,403	\$1,930,134	\$2,290,203	\$798,456
[M] Additional SGA - % of sales		\$0	\$0	\$1,132,491	\$4,368,198	\$5,183,091	\$1,807,032
[N] Total incremental costs		\$0	\$0	\$6,075,068	\$23,432,504	\$27,803,868	\$9,693,536
[O] Lost profits - undiscounted		<b>\$0</b>	<b>\$0</b>	<b>\$6,496,460</b>	<b>\$25,057,880</b>	<b>\$29,732,460</b>	<b>\$10,365,920</b>
							<b>\$71,652,720</b>

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## Scenario 2 - Undiscounted Lost Profits: In-house Model (2 Year X/Xi Delay) Second Rebuttal Schedule 4.1

### NOTES / SOURCES:

Note: Any minor differences are due to rounding.

- [A] Per Second Rebuttal Schedule 4.2.
- [B] Per Second Rebuttal Schedule 8.0. For purposes of my analysis, the ASP after 2022 is the same as 2022.
- [C] Per Second Rebuttal Schedule 9.0. For purposes of my analysis, the cost per unit after 2022 is the same as 2022.
- [D] Per Second Rebuttal Schedule 10.0.
- [E] = [B] \* 4%. Per SIS169233-169280 at 238-239, SIS would have paid Vizient a GPO administrative fee of 4% of net sales. Per SIS319315, SIS would have paid Yankee a 3% administrative fee. SIS would not have paid an administrative fee for non-Vizient and non-Yankee customers. For purposes of my analysis, I assume all sales would have been subject to a 4% administrative fee, consistent with the Vizient Agreement.
- [F] = [B] \* 9% per Second Rebuttal Schedule 15.1.
- [G] = [C] + [D] + [E] + [F]
- [H] = [B] - [G]
- [I] = [A] \* [B]
- [J] = [A] \* [C]
- [K] = [A] \* [D]
- [L] = [A] \* [E]
- [M] = [A] \* [F]
- [N] = [J] + [K] + [L] + [M]
- [O] = [I] - [N]

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# Scenario 2 - Lost EndoWrist Repair Units (2 Year X/Xi Delay)

## Second Rebuttal Schedule 4.2

	2020	2021	2022	2023	2024	2025	Total
<b><u>EndoWrist instruments potentially repairable by SIS - units</u></b>							
[A] da Vinci S/Si	52,970	22,411	8,214	3,839	1,928	1,077	90,439
[A] da Vinci X/Xi	0	0	365,304	422,719	455,982	437,186	1,681,191
<b>[A] Total</b>	<b>52,970</b>	<b>22,411</b>	<b>373,518</b>	<b>426,558</b>	<b>457,910</b>	<b>438,263</b>	<b>1,771,630</b>
[B] Expiration rate of new sales units	60%	60%	60%	60%	60%	60%	60%
<b><u>Expired EndoWrist instrument - units</u></b>							
[C] da Vinci S/Si	31,782	13,447	4,928	2,303	1,157	646	54,263
[C] da Vinci X/Xi	0	0	219,182	253,631	273,589	262,312	1,008,714
<b>[C] Total</b>	<b>31,782</b>	<b>13,447</b>	<b>224,110</b>	<b>255,934</b>	<b>274,746</b>	<b>262,958</b>	<b>1,062,977</b>
[D] SIS market share rate	55%	55%	55%	55%	55%	55%	55%
<b><u>SIS market share units</u></b>							
[E] da Vinci S/Si	17,480	7,396	2,710	1,267	636	355	29,844
[E] da Vinci X/Xi	0	0	120,550	139,497	150,474	144,272	554,793
<b>[E] Total</b>	<b>17,480</b>	<b>7,396</b>	<b>123,260</b>	<b>140,764</b>	<b>151,110</b>	<b>144,627</b>	<b>584,637</b>
<b><u>SIS conversion factor</u></b>							
[F] da Vinci S/Si	15%	50%	70%	70%	70%	70%	70%
[F] da Vinci X/Xi			15%	50%	70%	70%	70%
<b><u>SIS converted units</u></b>							
[G] da Vinci S/Si	2,622	3,698	1,897	887	445	249	9,798
[G] da Vinci X/Xi	0	0	18,083	69,749	105,332	100,990	294,154
<b>[G] Total</b>	<b>2,622</b>	<b>3,698</b>	<b>19,980</b>	<b>70,636</b>	<b>105,777</b>	<b>101,239</b>	<b>303,952</b>
[H] Collection rate of SIS market share units	70%	70%	70%	70%	70%	70%	70%
<b><u>SIS collected units</u></b>							
[I] da Vinci S/Si	1,835	2,589	1,328	621	312	174	6,859
[I] da Vinci X/Xi	0	0	12,658	48,824	73,732	70,693	205,907
<b>[I] Total</b>	<b>1,835</b>	<b>2,589</b>	<b>13,986</b>	<b>49,445</b>	<b>74,044</b>	<b>70,867</b>	<b>212,766</b>
[J] Repair yield of SIS would-have-been units	69.35%	69.35%	69.35%	69.35%	69.35%	69.35%	69.35%
<b><u>Would-have-been Lost EndoWrist repair units</u></b>							
[K] da Vinci S/Si	1,273	1,796	921	431	216	121	4,758
[K] da Vinci X/Xi	0	0	8,779	33,862	51,137	49,029	142,807
<b>[K] Total</b>	<b>1,273</b>	<b>1,796</b>	<b>9,700</b>	<b>34,293</b>	<b>51,353</b>	<b>49,150</b>	<b>147,565</b>
[L] Market penetration (% of total units)	2%	8%	3%	8%	11%	11%	8%

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# Scenario 2 - Lost EndoWrist Repair Units (2 Year X/Xi Delay)

## Second Rebuttal Schedule 4.2

	2020	2021	2022	2023	2024	2025	Total
<b><u>Actual conversion rate</u></b>							
[M] da Vinci S/Si					15%	50%	
[M] da Vinci X/Xi					15%	50%	
<b><u>Actual EndoWrist repair units</u></b>							
[N] da Vinci S/Si				46	86	132	
[N] da Vinci X/Xi				10,958	35,021	45,979	
[N] Total				<b>11,004</b>	<b>35,107</b>	<b>46,111</b>	
<b><u>Lost EndoWrist repair units</u></b>							
[O] da Vinci S/Si	1,273	1,796	921	431	170	35	4,626
[O] da Vinci X/Xi	0	0	8,779	33,862	40,179	14,008	96,828
[O] Total	<b>1,273</b>	<b>1,796</b>	<b>9,700</b>	<b>34,293</b>	<b>40,349</b>	<b>14,043</b>	<b>101,454</b>

### NOTES / SOURCES:

Note: Any minor differences are due to rounding.

[A] Per Second Rebuttal Schedule 6.0. Note: Per Parker Dep. 143-144 (October 25, 2022), in a but for world (a world without Intuitive's anticompetitive behaviors), Restore would have begun repairing X/Xi EndoWrists by January 2022. For purposes of my analysis, I assume X/Xi EndoWrist repairs start on January 1, 2022.

[B] Per Second Rebuttal Schedule 7.0.

[C] = [A] \* [B]

[D] Per <https://web.archive.org/web/20191108191050/https://www.vizientinc.com/what-we-do> as of November 8, 2019, "50% of the nation's acute care providers are Vizient members." Per <https://www.vizientinc.com/> as of November 29, 2022, Vizient has ">60% of acute care hospitals in the U.S." For purposes of my analysis, I use 55%. See discussion in my report.

[E] = [C] \* [D]

[F] Per discussion with Jean Sargent, I understand the conversion rate would have been at 30% at the end of year 1, 70% at the end of year 2 and 70% thereafter, recognizing SIS would not have gotten all hospitals. For purposes of my analysis, I use an average of 15% in year 1, 50% in year 2 and 70% thereafter. Also, per discussions with Greg Posdal and Keith Johnson, I understand SIS believed its ramp up period would have been one year.

[G] = [E] \* [F]

[H] Per Morales 30(b)(6) Dep. Ex. 143 (Intuitive-00626597-626616 at 604), where Intuitive targets a collection rate of 70%. See also, Intuitive-00620200 where Intuitive assumes a collection rate of 70%. See also, Morales 30(b)(6)Dep. Ex. 141 (at pdf page 1), where Intuitive targets a collection rate of 80%. Per discussion with Jean Sargent, I understand for an expensive instrument such as an EndoWrist, a 75% collection rate would be reasonable.

[I] = [G] \* [H]

[J] Deposition of Clifton Parker 43-45, 178-179 (October 25, 2022). Per Restore-00094918-00094956 at 922 (Parker Dep. Ex. 121), 215 out of 310 instruments (approximately 69.35%) collected in a 2-week sample that had lives on them passed Restore's inspection (i.e., were repairable). Note: Per Morales 30(b)(6) Dep. Ex. 143 (Intuitive-00626597-626616 at 609), where Intuitive realized a yield of 85%. See also, Morales 30(b)(6) Dep. Ex. 143 (Intuitive-00626597-626616 at 612), where Intuitive targeted a yield of 85% to 95%. Second Rebuttal Schedule 14.0 shows the repair yield of SIS collectable units was approximately 88%. For purposes of my analysis, I use approximately 69.35%.

[K] = [I] \* [J]

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## Scenario 2 - Lost EndoWrist Repair Units (2 Year X/Xi Delay)

### Second Rebuttal Schedule 4.2

2020	2021	2022	2023	2024	2025	Total
------	------	------	------	------	------	-------

[L] = [K] / [A]

[M] Assuming trial is resolved in or about January 1, 2024, SIS would then begin ramping up. For the Actual EndoWrist repair units, I use the Year 1, Year 2 and Year 3 market conversion rates addressed at [F] above. Currently, I assume Year 1 is 2024 and the first year SIS will begin selling its repair program again. Per May Dep. 60 (November 3, 2022), Restore will have the technical capability to change the usage limitations of the EndoWrist X/Xi's in the third or fourth quarter of 2023. For purposes of this analysis, I assume the conversion rate for the S/Si and X/Xi would be the same starting January 1, 2024.

[N] = [E] \* [H] \* [J] \* [M]

[O] = [K] - [N]

# Scenario 2 - Discounted Lost Profits: In-house Model (1 Year X/Xi Delay)

## Second Rebuttal Schedule 4.3

	2020	2021	2022	2023	2024	2025	Total
<b><u>Lost EndoWrist repair units</u></b>							
[A] da Vinci S/Si	1,273	1,796	921	431	170	35	4,626
[B] da Vinci X/Xi	0	8,329	29,263	47,407	40,179	14,008	139,186
[C] Total	1,273	10,125	30,184	47,838	40,349	14,043	143,812
<b><u>Lost revenues</u></b>							
[A] da Vinci S/Si	\$1,829,301	\$2,605,996	\$1,320,714	\$618,054	\$243,780	\$50,190	\$6,668,035
[B] da Vinci X/Xi	\$0	\$11,868,825	\$41,904,616	\$67,886,824	\$57,536,328	\$20,059,456	\$199,256,049
[C] Total	\$1,829,301	\$14,474,821	\$43,225,330	\$68,504,878	\$57,780,108	\$20,109,646	\$205,924,084
<b><u>Incremental costs</u></b>							
[A] da Vinci S/Si	\$870,732	\$1,246,424	\$637,332	\$298,252	\$117,640	\$24,220	\$3,194,600
[B] da Vinci X/Xi	\$0	\$5,747,010	\$20,249,996	\$32,805,644	\$27,803,868	\$9,693,536	\$96,300,054
[C] Total	\$870,732	\$6,993,434	\$20,887,328	\$33,103,896	\$27,921,508	\$9,717,756	\$99,494,654
<b><u>Lost profits (undiscounted)</u></b>							
[A] da Vinci S/Si	\$958,569	\$1,359,572	\$683,382	\$319,802	\$126,140	\$25,970	\$3,473,435
[B] da Vinci X/Xi	\$0	\$6,121,815	\$21,654,620	\$35,081,180	\$29,732,460	\$10,365,920	\$102,955,995
[C] Total	\$958,569	\$7,481,387	\$22,338,002	\$35,400,982	\$29,858,600	\$10,391,890	\$106,429,430
[D] Discount %					12%	12%	
[E] Discount period					0.5	1.5	
[F] Discount factor	1.00000	1.00000	1.00000	1.00000	0.94491	0.84367	
[G] Discounted lost profits	\$958,569	\$7,481,387	\$22,338,002	\$35,400,982	\$28,213,690	\$8,767,326	\$103,159,956

### NOTES / SOURCES:

Note: Any minor differences are due to rounding.

[A] Per Second Rebuttal Schedule 4.4.

[B] Per Second Rebuttal Schedule 4.4.

[C] = [A] + [B]

[D] For the GICS 35101010, Health Care Equipment & Supplies, Duff and Phelps - Cost of Capital Composite, September 30, 2022, the average WACC (weighted average cost of capital) is 9.2% and median WACC is 8.9%. For the small composite, the WACC is 11.1% to 11.2% (CRSP Decile). For purposes of my analysis I use 12%, which is conservative. Note: The projections after 2022 do not include growth, therefore the discount rate would likely be less.

[E] Calculated using the mid-year convention to January 1, 2024, the approximate date of trial.

[F] = (1 + [H]) ^ - [I], rounded to 5 decimals.

[G] = Lost profits (undiscounted) per [C] \* [F]

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## Scenario 2 - Undiscounted Lost Profits: In-house Model (1 Year X/Xi Delay) Second Rebuttal Schedule 4.4

	2020	2021	2022	2023	2024	2025	Total
<b>da Vinci S/Si</b>							
[A] Lost EndoWrist repair units	1,273	1,796	921	431	170	35	4,626
<u>Per unit</u>							
[B] Average selling price	\$1,437	\$1,451	\$1,434	\$1,434	\$1,434	\$1,434	\$1,441
<u>Incremental costs per unit</u>							
[C] Repair costs	\$148	\$155	\$156	\$156	\$156	\$156	\$153
[D] Chip costs	\$350	\$350	\$350	\$350	\$350	\$350	\$350
[E] Vizient admin fees - % of sales	4%	\$57	\$58	\$57	\$57	\$57	\$57
[F] Additional SGA - % of sales	9%	\$129	\$131	\$129	\$129	\$129	\$130
[G] Total incremental costs		\$684	\$694	\$692	\$692	\$692	\$691
[H] Lost profits per unit		\$753	\$757	\$742	\$742	\$742	\$751
[I] Lost revenues		\$1,829,301	\$2,605,996	\$1,320,714	\$618,054	\$243,780	\$50,190
<u>Incremental costs</u>							
[J] Repair costs	\$188,404	\$278,380	\$143,676	\$67,236	\$26,520	\$5,460	\$709,676
[K] Chip costs	\$445,550	\$628,600	\$322,350	\$150,850	\$59,500	\$12,250	\$1,619,100
[L] Vizient admin fees - 4% of sales		\$72,561	\$104,168	\$52,497	\$24,567	\$9,690	\$1,995
[M] Additional SGA - % of sales		\$164,217	\$235,276	\$118,809	\$55,599	\$21,930	\$4,515
[N] Total incremental costs		\$870,732	\$1,246,424	\$637,332	\$298,252	\$117,640	\$24,220
[O] Lost profits - undiscounted		<b>\$958,569</b>	<b>\$1,359,572</b>	<b>\$683,382</b>	<b>\$319,802</b>	<b>\$126,140</b>	<b>\$25,970</b>
<b>da Vinci X/Xi</b>							
[A] Lost EndoWrist repair units	0	8,329	29,263	47,407	40,179	14,008	139,186
<u>Per unit</u>							
[B] Average selling price	\$1,414	\$1,425	\$1,432	\$1,432	\$1,432	\$1,432	\$1,432
<u>Incremental costs per unit</u>							
[C] Repair costs	\$148	\$155	\$156	\$156	\$156	\$156	\$156
[D] Chip costs	\$350	\$350	\$350	\$350	\$350	\$350	\$350
[E] Vizient admin fees - % of sales	4%	\$57	\$57	\$57	\$57	\$57	\$57
[F] Additional SGA - % of sales	9%	\$127	\$128	\$129	\$129	\$129	\$129
[G] Total incremental costs		\$682	\$690	\$692	\$692	\$692	\$692
[H] Lost profits per unit		\$732	\$735	\$740	\$740	\$740	\$740
[I] Lost revenues		\$0	\$11,868,825	\$41,904,616	\$67,886,824	\$57,536,328	\$20,059,456
<u>Incremental costs</u>							
[J] Repair costs	\$0	\$1,290,995	\$4,565,028	\$7,395,492	\$6,267,924	\$2,185,248	\$21,704,687
[K] Chip costs	\$0	\$2,915,150	\$10,242,050	\$16,592,450	\$14,062,650	\$4,902,800	\$48,715,100
[L] Vizient admin fees - 4% of sales		\$0	\$474,753	\$1,667,991	\$2,702,199	\$2,290,203	\$798,456
[M] Additional SGA - % of sales		\$0	\$1,066,112	\$3,774,927	\$6,115,503	\$5,183,091	\$17,946,665
[N] Total incremental costs		\$0	\$5,747,010	\$20,249,996	\$32,805,644	\$27,803,868	\$9,693,536
[O] Lost profits - undiscounted		<b>\$0</b>	<b>\$6,121,815</b>	<b>\$21,654,620</b>	<b>\$35,081,180</b>	<b>\$29,732,460</b>	<b>\$102,955,995</b>

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## Scenario 2 - Undiscounted Lost Profits: In-house Model (1 Year X/Xi Delay) Second Rebuttal Schedule 4.4

### NOTES / SOURCES:

Note: Any minor differences are due to rounding.

- [A] Per Second Rebuttal Schedule 4.5.
- [B] Per Second Rebuttal Schedule 8.0. For purposes of my analysis, the ASP after 2022 is the same as 2022.
- [C] Per Second Rebuttal Schedule 9.0. For purposes of my analysis, the cost per unit after 2022 is the same as 2022.
- [D] Per Second Rebuttal Schedule 10.0.
- [E] = [B] \* 4%. Per SIS169233-169280 at 238-239, SIS would have paid Vizient a GPO administrative fee of 4% of net sales. Per SIS319315, SIS would have paid Yankee a 3% administrative fee. SIS would not have paid an administrative fee for non-Vizient and non-Yankee customers. For purposes of my analysis, I assume all sales would have been subject to a 4% administrative fee, consistent with the Vizient Agreement.
- [F] = [B] \* 9% per Second Rebuttal Schedule 15.1.
- [G] = [C] + [D] + [E] + [F]
- [H] = [B] - [G]
- [I] = [A] \* [B]
- [J] = [A] \* [C]
- [K] = [A] \* [D]
- [L] = [A] \* [E]
- [M] = [A] \* [F]
- [N] = [J] + [K] + [L] + [M]
- [O] = [I] - [N]

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# Scenario 2 - Lost EndoWrist Repair Units (1 Year X/Xi Delay)

## Second Rebuttal Schedule 4.5

	2020	2021	2022	2023	2024	2025	Total
<b><u>EndoWrist instruments potentially repairable by SIS - units</u></b>							
[A] da Vinci S/Si	52,970	22,411	8,214	3,839	1,928	1,077	90,439
[A] da Vinci X/Xi	0	346,579	365,304	422,719	455,982	437,186	2,027,770
[A] Total	<b>52,970</b>	<b>368,990</b>	<b>373,518</b>	<b>426,558</b>	<b>457,910</b>	<b>438,263</b>	<b>2,118,209</b>
[B] Expiration rate of new sales units	60%	60%	60%	60%	60%	60%	60%
<b><u>Expired EndoWrist instrument - units</u></b>							
[C] da Vinci S/Si	31,782	13,447	4,928	2,303	1,157	646	54,263
[C] da Vinci X/Xi	0	207,947	219,182	253,631	273,589	262,312	1,216,661
[C] Total	<b>31,782</b>	<b>221,394</b>	<b>224,110</b>	<b>255,934</b>	<b>274,746</b>	<b>262,958</b>	<b>1,270,924</b>
[D] SIS market share rate	55%	55%	55%	55%	55%	55%	55%
<b><u>SIS market share units</u></b>							
[E] da Vinci S/Si	17,480	7,396	2,710	1,267	636	355	29,844
[E] da Vinci X/Xi	0	114,371	120,550	139,497	150,474	144,272	669,164
[E] Total	<b>17,480</b>	<b>121,767</b>	<b>123,260</b>	<b>140,764</b>	<b>151,110</b>	<b>144,627</b>	<b>699,008</b>
<b><u>SIS conversion factor</u></b>							
[F] da Vinci S/Si	15%	50%	70%	70%	70%	70%	70%
[F] da Vinci X/Xi		15%	50%	70%	70%	70%	70%
<b><u>SIS converted units</u></b>							
[G] da Vinci S/Si	2,622	3,698	1,897	887	445	249	9,798
[G] da Vinci X/Xi	0	17,156	60,275	97,648	105,332	100,990	381,401
[G] Total	<b>2,622</b>	<b>20,854</b>	<b>62,172</b>	<b>98,535</b>	<b>105,777</b>	<b>101,239</b>	<b>391,199</b>
[H] Collection rate of SIS market share units	70%	70%	70%	70%	70%	70%	70%
<b><u>SIS collected units</u></b>							
[I] da Vinci S/Si	1,835	2,589	1,328	621	312	174	6,859
[I] da Vinci X/Xi	0	12,009	42,193	68,354	73,732	70,693	266,981
[I] Total	<b>1,835</b>	<b>14,598</b>	<b>43,521</b>	<b>68,975</b>	<b>74,044</b>	<b>70,867</b>	<b>273,840</b>
[J] Repair yield of SIS would-have-been units	69.35%	69.35%	69.35%	69.35%	69.35%	69.35%	69.35%
<b><u>Would-have-been Lost EndoWrist repair units</u></b>							
[K] da Vinci S/Si	1,273	1,796	921	431	216	121	4,758
[K] da Vinci X/Xi	0	8,329	29,263	47,407	51,137	49,029	185,165
[K] Total	<b>1,273</b>	<b>10,125</b>	<b>30,184</b>	<b>47,838</b>	<b>51,353</b>	<b>49,150</b>	<b>189,923</b>
[L] Market penetration (% of total units)	2%	3%	8%	11%	11%	11%	9%

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# Scenario 2 - Lost EndoWrist Repair Units (1 Year X/Xi Delay)

## Second Rebuttal Schedule 4.5

	2020	2021	2022	2023	2024	2025	Total
<b>Actual conversion rate</b>							
[M] da Vinci S/Si					15%	50%	
[M] da Vinci X/Xi					15%	50%	
<b>Actual EndoWrist repair units</b>							
[N] da Vinci S/Si				46	86	132	
[N] da Vinci X/Xi				10,958	35,021	45,979	
[N] Total				<u>11,004</u>	<u>35,107</u>	<u>46,111</u>	
<b>Lost EndoWrist repair units</b>							
[O] da Vinci S/Si	1,273	1,796	921	431	170	35	4,626
[O] da Vinci X/Xi	0	8,329	29,263	47,407	40,179	14,008	139,186
[O] Total	<u>1,273</u>	<u>10,125</u>	<u>30,184</u>	<u>47,838</u>	<u>40,349</u>	<u>14,043</u>	<u>143,812</u>

### NOTES / SOURCES:

Note: Any minor differences are due to rounding.

[A] Per Second Rebuttal Schedule 6.0. Note: Marcus Engineering proposed a statement of work to Restore in late June 2019 for circumventing the X/Xi encryption and resetting the X/Xi EndoWrist use counter. I understand Marcus Engineering's efforts "have been successful in many of the aspects" of "reverse engineering on the Xi[.]" Based on progress as of November 2022, Restore anticipates that it will have the technical ability to reset the X/Xi EndoWrist use counter in "the third and fourth quarter, 2023." See May Dep. 40 and 60-61 (November 3, 2022) and May Dep. Exhibit 155. For purposes of my analysis, I assume X/Xi EndoWrist repairs start on January 1, 2021.

[B] Per Second Rebuttal Schedule 7.0.

[C] = [A] \* [B]

[D] Per <https://web.archive.org/web/20191108191050/https://www.vizientinc.com/what-we-do> as of November 8, 2019, "50% of the nation's acute care providers are Vizient members." Per <https://www.vizientinc.com/> as of November 29, 2022, Vizient has ">60% of acute care hospitals in the U.S." For purposes of my analysis, I use 55%. See discussion in my report.

[E] = [C] \* [D]

[F] Per discussion with Jean Sargent, I understand the conversion rate would have been at 30% at the end of year 1, 70% at the end of year 2 and 70% thereafter, recognizing SIS would not have gotten all hospitals. For purposes of my analysis, I use an average of 15% in year 1, 50% in year 2 and 70% thereafter. Also, per discussions with Greg Posdal and Keith Johnson. I understand SIS believed its ramp up period would have been one year.

[G] = [E] \* [F]

[H] Per Morales 30(b)(6) Dep. Ex. 143 (Intuitive-00626597-626616 at 604), where Intuitive targets a collection rate of 70%. See also, Intuitive-00620200 where Intuitive assumes a collection rate of 70%. See also, Morales 30(b)(6)Dep. Ex. 141 (at pdf page 1), where Intuitive targets a collection rate of 80%. Per discussion with Jean Sargent, I understand for an expensive instrument such as an EndoWrist, a 75% collection rate would be reasonable.

[I] = [G] \* [H]

[J] Deposition of Clifton Parker 43-45, 178-179 (October 25, 2022). Per Restore-00094918-00094956 at 922 (Parker Dep. Ex. 121), 215 out of 310 instruments (approximately 69.35%) collected in a 2-week sample that had lives on them passed Restore's inspection (i.e., were repairable). Note: Per Morales 30(b)(6) Dep. Ex. 143 (Intuitive-00626597-626616 at 609), where Intuitive realized a yield of 85%. See also, Morales 30(b)(6) Dep. Ex. 143 (Intuitive-00626597-626616 at 612), where Intuitive targeted a yield of 85% to 95%. Second Rebuttal Schedule 14.0 shows the repair yield of SIS collectable units was approximately 88%. For purposes of my analysis, I use approximately 69.35%.

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## Scenario 2 - Lost EndoWrist Repair Units (1 Year X/Xi Delay) Second Rebuttal Schedule 4.5

2020	2021	2022	2023	2024	2025	Total
------	------	------	------	------	------	-------

[K] = [I] \* [J]

[L] = [K] / [A]

[M] Assuming trial is resolved in or about January 1, 2024, SIS would then begin ramping up. For the Actual EndoWrist repair units, I use the Year 1, Year 2 and Year 3 market conversion rates addressed at [F] above. Currently, I assume Year 1 is 2024 and the first year SIS will begin selling its repair program again. Per May Dep. 60 (November 3, 2022), Restore will have the technical capability to change the usage limitations of the EndoWrist X/Xi's in the third or fourth quarter of 2023. For purposes of this analysis, I assume the conversion rate for the S/Si and X/Xi would be the same starting January 1, 2024.

[N] = [E] \* [H] \* [J] \* [M]

[O] = [K] - [N]

# Scenario 2 - Discounted Lost Profits: Distributor Model (2 Year X/Xi Delay) Second Rebuttal Schedule 5.0

	2020	2021	2022	2023	2024	2025	Total
<b><u>Lost EndoWrist repair units</u></b>							
[A] da Vinci S/Si	1,273	1,796	921	431	170	35	4,626
[B] da Vinci X/Xi	0	0	8,779	33,862	40,179	14,008	96,828
[C] Total	1,273	1,796	9,700	34,293	40,349	14,043	101,454
<b><u>Lost revenues</u></b>							
[A] da Vinci S/Si	\$1,829,301	\$2,605,996	\$1,320,714	\$618,054	\$243,780	\$50,190	\$6,668,035
[B] da Vinci X/Xi	\$0	\$0	\$12,571,528	\$48,490,384	\$57,536,328	\$20,059,456	\$138,657,696
[C] Total	\$1,829,301	\$2,605,996	\$13,892,242	\$49,108,438	\$57,780,108	\$20,109,646	\$145,325,731
<b><u>Incremental costs</u></b>							
[A] da Vinci S/Si	\$991,667	\$1,426,024	\$713,775	\$334,025	\$131,750	\$27,125	\$3,624,366
[B] da Vinci X/Xi	\$0	\$0	\$6,821,283	\$26,310,774	\$31,219,083	\$10,884,216	\$75,235,356
[C] Total	\$991,667	\$1,426,024	\$7,535,058	\$26,644,799	\$31,350,833	\$10,911,341	\$78,859,722
<b><u>Lost profits (undiscounted)</u></b>							
[A] da Vinci S/Si	\$837,634	\$1,179,972	\$606,939	\$284,029	\$112,030	\$23,065	\$3,043,669
[B] da Vinci X/Xi	\$0	\$0	\$5,750,245	\$22,179,610	\$26,317,245	\$9,175,240	\$63,422,340
[C] Total	\$837,634	\$1,179,972	\$6,357,184	\$22,463,639	\$26,429,275	\$9,198,305	\$66,466,009
[D] Discount %					12%	12%	
[E] Discount period					0.5	1.5	
[F] Discount factor	1.00000	1.00000	1.00000	1.00000	0.94491	0.84367	
[G] Discounted lost profits	\$837,634	\$1,179,972	\$6,357,184	\$22,463,639	\$24,973,286	\$7,760,334	\$63,572,049

## NOTES / SOURCES:

Note: Any minor differences are due to rounding.

[A] Per Second Rebuttal Schedule 5.1.

[B] Per Second Rebuttal Schedule 5.1.

[C] = [A] + [B]

[D] For the GICS 35101010, Health Care Equipment & Supplies, Duff and Phelps - Cost of Capital Composite, September 30, 2022, the average SIC/GICS Composite WACC (weighted average cost of capital) is 9.2% and median WACC is 8.9%. For the small composite, the WACC is 11.1% to 11.2% (CRSP Decile). For purposes of my analysis I use 12%, which is conservative. Note: The projections after 2022 do not include growth, therefore the discount rate would likely be less.

[E] Calculated using the mid-year convention to January 1, 2024, the approximate date of trial.

[F] = (1 + [H]) ^ - [I], rounded to 5 decimals.

[G] = Lost profits (undiscounted) per [C] \* [F]

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## Scenario 2 - Undiscounted Lost Profits: Distributor Model (2 Year X/Xi Delay) Second Rebuttal Schedule 5.1

	2020	2021	2022	2023	2024	2025	Total	
<b>da Vinci S/Si</b>								
[A] Lost EndoWrist repair units		1,273	1,796	921	431	170	35	4,626
<u>Per unit</u>								
[B] Average selling price		\$1,437	\$1,451	\$1,434	\$1,434	\$1,434	\$1,441	
<u>Incremental costs per unit</u>								
[C] Repair costs (including chip costs)		\$593	\$605	\$589	\$589	\$589	\$589	\$596
[D] Vizient admin fees - % of sales	4%	\$57	\$58	\$57	\$57	\$57	\$57	\$57
[E] Additional SGA - % of sales	9%	\$129	\$131	\$129	\$129	\$129	\$129	\$130
[F] Total incremental costs		\$779	\$794	\$775	\$775	\$775	\$775	\$783
[G] Lost profits per unit		\$658	\$657	\$659	\$659	\$659	\$659	\$658
[H] Lost revenues		\$1,829,301	\$2,605,996	\$1,320,714	\$618,054	\$243,780	\$50,190	\$6,668,035
<u>Incremental costs</u>								
[I] Repair costs (including chip costs)		\$754,889	\$1,086,580	\$542,469	\$253,859	\$100,130	\$20,615	\$2,758,542
[J] Vizient admin fees - 4% of sales		\$72,561	\$104,168	\$52,497	\$24,567	\$9,690	\$1,995	\$265,478
[K] Additional SGA - % of sales		\$164,217	\$235,276	\$118,809	\$55,599	\$21,930	\$4,515	\$600,346
[L] Total incremental costs		\$991,667	\$1,426,024	\$713,775	\$334,025	\$131,750	\$27,125	\$3,624,366
[M] Lost profits - undiscounted		\$837,634	\$1,179,972	\$606,939	\$284,029	\$112,030	\$23,065	\$3,043,669
<b>da Vinci X/Xi</b>								
[A] Lost EndoWrist repair units		0	0	8,779	33,862	40,179	14,008	96,828
<u>Per unit</u>								
[B] Average selling price		\$1,414	\$1,425	\$1,432	\$1,432	\$1,432	\$1,432	
<u>Incremental costs per unit</u>								
[C] Repair costs (including chip costs)		\$573	\$584	\$591	\$591	\$591	\$591	\$591
[D] Vizient admin fees - % of sales	4%	\$57	\$57	\$57	\$57	\$57	\$57	\$57
[E] Additional SGA - % of sales	9%	\$127	\$128	\$129	\$129	\$129	\$129	\$129
[F] Total incremental costs		\$757	\$769	\$777	\$777	\$777	\$777	\$777
[G] Lost profits per unit		\$657	\$656	\$655	\$655	\$655	\$655	\$655
[H] Lost revenues		\$0	\$0	\$12,571,528	\$48,490,384	\$57,536,328	\$20,059,456	\$138,657,696
<u>Incremental costs</u>								
[I] Repair costs (including chip costs)		\$0	\$0	\$5,188,389	\$20,012,442	\$23,745,789	\$8,278,728	\$57,225,348
[J] Vizient admin fees - 4% of sales		\$0	\$0	\$500,403	\$1,930,134	\$2,290,203	\$798,456	\$5,519,196
[K] Additional SGA - % of sales		\$0	\$0	\$1,132,491	\$4,368,198	\$5,183,091	\$1,807,032	\$12,490,812
[L] Total incremental costs		\$0	\$0	\$6,821,283	\$26,310,774	\$31,219,083	\$10,884,216	\$75,235,356
[M] Lost profits - undiscounted		\$0	\$0	\$5,750,245	\$22,179,610	\$26,317,245	\$9,175,240	\$63,422,340

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## Scenario 2 - Undiscounted Lost Profits: Distributor Model (2 Year X/Xi Delay) Second Rebuttal Schedule 5.1

### NOTES / SOURCES:

Note: Any minor differences are due to rounding.

- [A] Per Second Rebuttal Schedule 4.2.
- [B] Per Second Rebuttal Schedule 8.0. For purposes of my analysis, the ASP after 2022 is the same as 2022.
- [C] Per Second Rebuttal Schedule 11.0. For purposes of my analysis, the cost per unit after 2022 is the same as 2022.
- [D] = [B] \* 4%. Per SIS169233-169280 at 238-239, SIS would have paid Vizient a GPO administrative fee of 4% of net sales. Per SIS319315, SIS would have paid Yankee a 3% administrative fee. SIS would not have paid an administrative fee for non-Vizient and non-Yankee customers. For purposes of my analysis, I assume all sales would have been subject to a 4% administrative fee, consistent with the Vizient Agreement.
- [E] = [B] \* 9% per Second Rebuttal Schedule 15.1.
- [F] = [C] + [D] + [E]
- [G] = [B] - [F]
- [H] = [A] \* [B]
- [I] = [A] \* [C]
- [J] = [A] \* [D]
- [K] = [A] \* [E]
- [L] = [I] + [J] + [K]
- [M] = [H] - [L]

# Scenario 2 - Discounted Lost Profits: Distributor Model (1 Year X/Xi Delay)

## Second Rebuttal Schedule 5.2

	2020	2021	2022	2023	2024	2025	Total
<b><u>Lost EndoWrist repair units</u></b>							
[A] da Vinci S/Si	1,273	1,796	921	431	170	35	4,626
[B] da Vinci X/Xi	0	8,329	29,263	47,407	40,179	14,008	139,186
[C] Total	1,273	10,125	30,184	47,838	40,349	14,043	143,812
<b><u>Lost revenues</u></b>							
[A] da Vinci S/Si	\$1,829,301	\$2,605,996	\$1,320,714	\$618,054	\$243,780	\$50,190	\$6,668,035
[B] da Vinci X/Xi	\$0	\$11,868,825	\$41,904,616	\$67,886,824	\$57,536,328	\$20,059,456	\$199,256,049
[C] Total	\$1,829,301	\$14,474,821	\$43,225,330	\$68,504,878	\$57,780,108	\$20,109,646	\$205,924,084
<b><u>Incremental costs</u></b>							
[A] da Vinci S/Si	\$991,667	\$1,426,024	\$713,775	\$334,025	\$131,750	\$27,125	\$3,624,366
[B] da Vinci X/Xi	\$0	\$6,405,001	\$22,737,351	\$36,835,239	\$31,219,083	\$10,884,216	\$108,080,890
[C] Total	\$991,667	\$7,831,025	\$23,451,126	\$37,169,264	\$31,350,833	\$10,911,341	\$111,705,256
<b><u>Lost profits (undiscounted)</u></b>							
[A] da Vinci S/Si	\$837,634	\$1,179,972	\$606,939	\$284,029	\$112,030	\$23,065	\$3,043,669
[B] da Vinci X/Xi	\$0	\$5,463,824	\$19,167,265	\$31,051,585	\$26,317,245	\$9,175,240	\$91,175,159
[C] Total	\$837,634	\$6,643,796	\$19,774,204	\$31,335,614	\$26,429,275	\$9,198,305	\$94,218,828
[D] Discount %					12%	12%	
[E] Discount period					0.5	1.5	
[F] Discount factor	1.00000	1.00000	1.00000	1.00000	0.94491	0.84367	
[G] Discounted lost profits	\$837,634	\$6,643,796	\$19,774,204	\$31,335,614	\$24,973,286	\$7,760,334	\$91,324,868

### NOTES / SOURCES:

Note: Any minor differences are due to rounding.

[A] Per Second Rebuttal Schedule 5.3.

[B] Per Second Rebuttal Schedule 5.3.

[C] = [A] + [B]

[D] For the GICS 35101010, Health Care Equipment & Supplies, Duff and Phelps - Cost of Capital Composite, September 30, 2022, the average WACC (weighted average cost of capital) is 9.2% and median WACC is 8.9%. For the small composite, the WACC is 11.1% to 11.2% (CRSP Decile). For purposes of my analysis I use 12%, which is conservative. Note: The projections after 2022 do not include growth, therefore the discount rate would likely be less.

[E] Calculated using the mid-year convention to January 1, 2024, the approximate date of trial.

[F] = (1 + [H]) ^ - [I], rounded to 5 decimals.

[G] = Lost profits (undiscounted) per [C] \* [F]

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## Scenario 2 - Undiscounted Lost Profits: Distributor Model (1 Year X/Xi Delay) Second Rebuttal Schedule 5.3

	2020	2021	2022	2023	2024	2025	Total	
<b>da Vinci S/Si</b>								
[A] Lost EndoWrist repair units		1,273	1,796	921	431	170	35	4,626
<u>Per unit</u>								
[B] Average selling price		\$1,437	\$1,451	\$1,434	\$1,434	\$1,434	\$1,441	
<u>Incremental costs per unit</u>								
[C] Repair costs (including chip costs)	4%	\$593	\$605	\$589	\$589	\$589	\$589	\$596
[D] Vizient admin fees - % of sales		\$57	\$58	\$57	\$57	\$57	\$57	\$57
[E] Additional SGA - % of sales	9%	\$129	\$131	\$129	\$129	\$129	\$129	\$130
[F] Total incremental costs		\$779	\$794	\$775	\$775	\$775	\$775	\$783
[G] Lost profits per unit		\$658	\$657	\$659	\$659	\$659	\$659	\$658
[H] Lost revenues		\$1,829,301	\$2,605,996	\$1,320,714	\$618,054	\$243,780	\$50,190	\$6,668,035
<u>Incremental costs</u>								
[I] Repair costs (including chip costs)		\$754,889	\$1,086,580	\$542,469	\$253,859	\$100,130	\$20,615	\$2,758,542
[J] Vizient admin fees - 4% of sales		\$72,561	\$104,168	\$52,497	\$24,567	\$9,690	\$1,995	\$265,478
[K] Additional SGA - % of sales		\$164,217	\$235,276	\$118,809	\$55,599	\$21,930	\$4,515	\$600,346
[L] Total incremental costs		\$991,667	\$1,426,024	\$713,775	\$334,025	\$131,750	\$27,125	\$3,624,366
[M] Lost profits - undiscounted		\$837,634	\$1,179,972	\$606,939	\$284,029	\$112,030	\$23,065	\$3,043,669
<b>da Vinci X/Xi</b>								
[A] Lost EndoWrist repair units		0	8,329	29,263	47,407	40,179	14,008	139,186
<u>Per unit</u>								
[B] Average selling price		\$1,414	\$1,425	\$1,432	\$1,432	\$1,432	\$1,432	
<u>Incremental costs per unit</u>								
[C] Repair costs (including chip costs)	4%	\$573	\$584	\$591	\$591	\$591	\$591	\$591
[D] Vizient admin fees - % of sales		\$57	\$57	\$57	\$57	\$57	\$57	\$57
[E] Additional SGA - % of sales	9%	\$127	\$128	\$129	\$129	\$129	\$129	\$129
[F] Total incremental costs		\$757	\$769	\$777	\$777	\$777	\$777	\$777
[G] Lost profits per unit		\$657	\$656	\$655	\$655	\$655	\$655	\$655
[H] Lost revenues		\$0	\$11,868,825	\$41,904,616	\$67,886,824	\$57,536,328	\$20,059,456	\$199,256,049
<u>Incremental costs</u>								
[I] Repair costs (including chip costs)		\$0	\$4,864,136	\$17,294,433	\$28,017,537	\$23,745,789	\$8,278,728	\$82,200,623
[J] Vizient admin fees - 4% of sales		\$0	\$474,753	\$1,667,991	\$2,702,199	\$2,290,203	\$798,456	\$7,933,602
[K] Additional SGA - % of sales		\$0	\$1,066,112	\$3,774,927	\$6,115,503	\$5,183,091	\$1,807,032	\$17,946,665
[L] Total incremental costs		\$0	\$6,405,001	\$22,737,351	\$36,835,239	\$31,219,083	\$10,884,216	\$108,080,890
[M] Lost profits - undiscounted		\$0	\$5,463,824	\$19,167,265	\$31,051,585	\$26,317,245	\$9,175,240	\$91,175,159

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## Scenario 2 - Undiscounted Lost Profits: Distributor Model (1 Year X/Xi Delay) Second Rebuttal Schedule 5.3

### NOTES / SOURCES:

Note: Any minor differences are due to rounding.

- [A] Per Second Rebuttal Schedule 4.5.
- [B] Per Second Rebuttal Schedule 8.0. For purposes of my analysis, the ASP after 2022 is the same as 2022.
- [C] Per Second Rebuttal Schedule 11.0. For purposes of my analysis, the cost per unit after 2022 is the same as 2022.
- [D] = [B] \* 4%. Per SIS169233-169280 at 238-239, SIS would have paid Vizient a GPO administrative fee of 4% of net sales. Per SIS319315, SIS would have paid Yankee a 3% administrative fee. SIS would not have paid an administrative fee for non-Vizient and non-Yankee customers. For purposes of my analysis, I assume all sales would have been subject to a 4% administrative fee, consistent with the Vizient Agreement.
- [E] = [B] \* 9% per Second Rebuttal Schedule 15.1.
- [F] = [C] + [D] + [E]
- [G] = [B] - [F]
- [H] = [A] \* [B]
- [I] = [A] \* [C]
- [J] = [A] \* [D]
- [K] = [A] \* [E]
- [L] = [I] + [J] + [K]
- [M] = [H] - [L]

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# Intuitive's U.S. EndoWrist Instrument Units - Actual and Forecasted: 2014 - 2025

## Second Rebuttal Schedule 6.0

	2014	2015	2016	2017	2018	2019	2020	2021	2022	2023	2024	2025	2020-2021 decline
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### Actual EndoWrist instrument units

- [A] da Vinci S/Si
- [A] da Vinci X/Xi
- [A] da Vinci Xi 2.0/Xi R
- [A] Total

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### % share of units by system

[B] da Vinci S/Si	95.0%	81.4%	70.0%	57.2%	43.2%	28.2%	15.0%	6.1%	2.2%				
[B] da Vinci X/Xi		5.0%	18.6%	30.0%	42.8%	56.8%	71.8%	85.0%	93.9%	97.8%			
[B] da Vinci Xi 2.0/Xi R		0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%			
[B] Total	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%			

### Projected % of units by system

[C] da Vinci S/Si								0.9%	0.4%	0.2%			
[C] da Vinci X/Xi								99.1%	94.6%	81.2%			
[C] da Vinci Xi 2.0/Xi R								0.0%	5.0%	18.6%			
[C] Total								100.0%	100.0%	100.0%			

### [D] Expected growth in procedures

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### Forecasted EndoWrist instrument units

[E] da Vinci S/Si				3,839	1,928	1,077							
[E] da Vinci X/Xi				422,719	455,982	437,186							
[E] da Vinci Xi 2.0/Xi R				0	24,101	100,144							
[E] Total				426,558	482,011	538,406							

### Actual & forecasted EndoWrist instrument units

[F] da Vinci S/Si				3,839	1,928	1,077							
[F] da Vinci X/Xi				422,719	455,982	437,186							
[F] da Vinci Xi 2.0/Xi R				0	24,101	100,144							
[F] Total				426,558	482,011	538,406							
[F] Sub-total S/Si and X/Xi				426,558	457,910	438,263							

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# Intuitive's U.S. EndoWrist Instrument Units - Actual and Forecasted: 2014 - 2025 Second Rebuttal Schedule 6.0

## NOTES / SOURCES:

Note: Any minor differences are due to rounding.

[A] Per Second Rebuttal Schedule 13.0. Note: Actual unit sales per Second Rebuttal Schedule 13.0 are through June 2022. 2022 unit sales shown herein are annualized.

[B] Calculated based on the amounts herein.

[C] Units sales of da Vinci S/Si are projected to decline in the future at the same rate that sales declined (57.7%) between 2020 and 2021.

I understand the next generation da Vinci system could be introduced as some time in 2024 (See Somayaji Dep. 128-130). For purposes of this analysis, I assume the start of 2024. The share of sales of instruments for that next-generation system (da Vinci Xi 2.0/Xi R) are projected using the same penetration rates experienced by da Vinci X/Xi when it was introduced in 2014 (i.e., 5.0% in first year, 18.6% in second year, and so on), which is conservative given the next generation system (da Vinci Xi 2.0/Xi R) will face more legacy da Vinci systems when it is introduced.

Unit sales of da Vinci X/Xi is projected as 100% less the projected shares of da Vinci X/Xi and the next generation system.

[D] Per Intuitive forecasted annual growth rates for da Vinci surgical procedures in the United States. See Intuitive-01261766.

[E] Total forecast instrument sales calculated each year by applying growth rate [D] to total sales during prior year. Sales are allocated by system using shares from [C].

[F] Calculated based on the amounts herein.

# Estimated EndoWrist Expiration Rates: 2018 - 2021

## Second Rebuttal Schedule 7.0

[1]

	2018	2019	2020	2021	Total	Sub-total 2018 - 2019
<b>[A] Projected X/Xi annual expired EndoWrist units (for "Top 5" instruments)</b>	<b>73,129</b>	<b>100,376</b>	<b>129,298</b>	<b>157,537</b>	<b>460,340</b>	<b>173,505</b>
<b>Actual EndoWrist sales units for "Top 5" X/Xi instruments</b>						
<b>[B] 470006 / 471006 (Large Needle Driver)</b>	<b>22,103</b>	<b>29,534</b>	<b>31,548</b>	<b>30,447</b>	<b>113,632</b>	<b>51,637</b>
<b>[B] 470179 (Hot Shears (Monopolar Curved Scissors))</b>	<b>40,602</b>	<b>56,056</b>	<b>66,281</b>	<b>92,091</b>	<b>255,030</b>	<b>96,658</b>
<b>[B] 470205 / 471205 (Fenestrated Bipolar Forceps)</b>	<b>27,400</b>	<b>37,186</b>	<b>41,596</b>	<b>43,976</b>	<b>150,158</b>	<b>64,586</b>
<b>[B] 470093 / 471093 (ProGrap Forceps)</b>	<b>20,431</b>	<b>29,629</b>	<b>33,746</b>	<b>30,716</b>	<b>114,522</b>	<b>50,060</b>
<b>[B] 470172 / 471172 (Maryland Bipolar Forceps)</b>	<b>10,904</b>	<b>14,261</b>	<b>15,467</b>	<b>16,649</b>	<b>57,281</b>	<b>25,165</b>
<b>[B] Actual EndoWrist sales units for "Top 5" X/Xi instruments</b>	<b>121,440</b>	<b>166,666</b>	<b>188,638</b>	<b>213,879</b>	<b>690,623</b>	<b>288,106</b>
<b>[C] Expiration rate of total sales units</b>	<b>60%</b>	<b>60%</b>	<b>69%</b>	<b>74%</b>	<b>67%</b>	<b>60%</b>

### NOTES / SOURCES:

Note: Any minor differences are due to rounding.

[1] Calculated based on the amounts herein

[A] Per Morales 30(b)(6) Dep. Ex. 141 (at pdf page 1). As shown on Exhibit 141 (at pdf page 1), for 2018, these "Top 5" X/Xi SKUs represented 73,129 instruments of the 104,469 expired "core" X/Xi instruments, or approximately 70%.

[B] Per Second Rebuttal Schedule 9.1. Instrument numbers and descriptions identified per Morales 30(b)(6) Dep. Ex. 141 (at pdf page 3).

[C] Calculated based on the amounts herein.

# Potential EndoWrist Instrument Units, Net Sales Dollars and Average Selling Price by System (Using Intuitive Sales Volumes and September 2019 Vizient Amended Agreement Prices): 2018 - June 2022

## Second Rebuttal Schedule 8.0

	2018	2019	2020	2021	2022	Total	%
						thru June	
<b>Units</b>							
[A] da Vinci S/Si							
[B] da Vinci X/Xi							
<b>[C] Total</b>							
<b>Net sales dollars</b>							
[A] da Vinci S/Si							
[B] da Vinci X/Xi							
<b>[C] Total</b>							
<b>ASP per unit</b>							
[D] da Vinci S/Si	\$1,431	\$1,432	\$1,437	\$1,451	\$1,434	\$1,434	
[D] da Vinci X/Xi	\$1,418	\$1,411	\$1,414	\$1,425	\$1,432	\$1,420	
<b>[D] Total</b>	<b>\$1,424</b>	<b>\$1,417</b>	<b>\$1,418</b>	<b>\$1,427</b>	<b>\$1,432</b>	<b>\$1,423</b>	

### NOTES / SOURCES:

Note: Any minor differences are due to rounding.

[A] Per Second Rebuttal Schedule 8.1.

[B] Per Second Rebuttal Schedule 8.2.

[C] = [A] + [B]

[D] Calculated based on the amounts herein.

# Potential EndoWrist Instrument Units, Net Sales Dollars and ASP by Product (Instrument Number) - da Vinci S/Si (Using Intuitive Sales Volumes and September 2019 Vizient Amended Agreement Prices): 2018 - June 2022

## Second Rebuttal Schedule 8.1

2018	2019	2020	2021	2022	Total	%
				thru June		

## Units

[A]

# Potential EndoWrist Instrument Units, Net Sales Dollars and ASP by Product (Instrument Number) - da Vinci S/Si (Using Intuitive Sales Volumes and September 2019 Vizient Amended Agreement Prices): 2018 - June 2022

## Second Rebuttal Schedule 8.1

2018	2019	2020	2021	2022 thru June	Total	%
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# Potential EndoWrist Instrument Units, Net Sales Dollars and ASP by Product (Instrument Number) - da Vinci S/Si (Using Intuitive Sales Volumes and September 2019 Vizient Amended Agreement Prices): 2018 - June 2022

## Second Rebuttal Schedule 8.1

	2018	2019	2020	2021	2022	Total	%
						thru June	
<b>ASP</b>							
[B] 420179	\$1,700	\$1,700	\$1,700	\$1,700	\$1,700	\$1,700	
[B] 420006	\$1,300	\$1,300	\$1,300	\$1,300	\$1,300	\$1,300	
[B] 420093	\$1,300	\$1,300	\$1,300	\$1,300	\$1,300	\$1,300	
[B] 420205	\$1,600	\$1,600	\$1,600	\$1,600	\$1,600	\$1,600	
[B] 420309	\$1,300	\$1,300	\$1,300	\$1,300	\$1,300	\$1,300	
[B] 420194	\$1,300	\$1,300	\$1,300	\$1,300	\$1,300	\$1,300	
[B] 420172	\$1,600	\$1,600	\$1,600	\$1,600	\$1,600	\$1,600	
[B] 420049	\$1,100	\$1,100	\$1,100	\$1,100	\$1,100	\$1,100	
[B] 420227	\$1,600	\$1,600	\$1,600	\$1,600	\$1,600	\$1,600	
[B] 420183	\$1,100	\$1,100	\$1,100	\$1,100	\$1,100	\$1,100	
[B] 420296	\$1,300	\$1,300	\$1,300	\$1,300	\$1,300	\$1,300	
[B] 420230	\$1,100	\$1,100	\$1,100	\$1,100	\$1,100	\$1,100	
[B] 420184	\$1,100	\$1,100	\$1,100	\$1,100	\$1,100	\$1,100	
[B] 420327	\$1,100	\$1,100	\$1,100	\$1,100	\$1,100	\$1,100	
[B] 420207	\$1,300	\$1,300	\$1,300	\$1,300	\$1,300	\$1,300	
[B] 420190	\$1,300	\$1,300	\$1,300	\$1,300	\$1,300	\$1,300	
[B] 420189	\$1,100	\$1,100	\$1,100	\$1,100	\$1,100	\$1,100	
[B] 420110	\$1,600	\$1,600	\$1,600	\$1,600	\$1,600	\$1,600	
[B] 420048	\$1,300	\$1,300	\$1,300	\$1,300	\$1,300	\$1,300	
[B] 420318	\$1,300	\$1,300	\$1,300	\$1,300	\$1,300	\$1,300	
[B] 420003	\$1,300	\$1,300	\$1,300	\$1,300	\$1,300	\$1,300	
[B] 420001	\$1,100	\$1,100	\$1,100	\$1,100	\$1,100	\$1,100	
[B] 420007	\$1,100	\$1,100	\$1,100	\$1,100	\$1,100	\$1,100	
[B] 420278	\$1,300	\$1,300	\$1,300	\$1,300	\$1,300	\$1,300	
[B] 420344	\$1,600	\$1,600	\$1,600	\$1,600	\$1,600	\$1,600	
[B] 420033	\$1,300	\$1,300	\$1,300	\$1,300	\$1,300	\$1,300	

**Potential EndoWrist Instrument Units, Net Sales Dollars and ASP by Product (Instrument Number) - da Vinci S/Si (Using Intuitive Sales Volumes and September 2019 Vizient Amended Agreement Prices): 2018 - June 2022**

**Second Rebuttal Schedule 8.1**

	2018	2019	2020	2021	2022	Total	%
					thru June		
[B] 420036	\$1,100	\$1,100	\$1,100	\$1,100	\$1,100	\$1,100	
[B] 420178	\$1,100	\$1,100	\$1,100	\$1,100	\$1,100	\$1,100	
[B] 420171	\$1,600	\$1,600	\$1,600	\$1,600	\$1,600	\$1,600	
[B] 420246	\$1,600	\$1,600	\$1,600	\$1,600	\$1,600	\$1,600	
[B] 420249	\$1,600	\$1,600	\$1,600	\$1,600	\$1,600	\$1,600	
[B] 420181	\$1,300	\$1,300	\$1,300	\$1,300	\$1,300	\$1,300	
[B] 420157	\$1,300	\$1,300	\$1,300	\$1,300	\$1,300	\$1,300	
[B] 420204	\$1,600	\$1,600	\$1,600	\$1,600	\$1,600	\$1,600	
[B] 420121	\$1,600	\$1,600	\$1,600	\$1,600	\$1,600	\$1,600	
[B] 420215	\$1,300	\$1,300	\$1,300	\$1,300	\$1,300	\$1,300	
[B] 420203	\$1,300	\$1,300	\$1,300	\$1,300	\$1,300	\$1,300	
[B] 420192	\$1,100	\$1,100	\$1,100	\$1,100	\$1,100	\$1,100	

# Potential EndoWrist Instrument Units, Net Sales Dollars and ASP by Product (Instrument Number) - da Vinci S/Si (Using Intuitive Sales Volumes and September 2019 Vizient Amended Agreement Prices): 2018 - June 2022

## Second Rebuttal Schedule 8.1

# Potential EndoWrist Instrument Units, Net Sales Dollars and ASP by Product (Instrument Number) - da Vinci S/Si (Using Intuitive Sales Volumes and September 2019 Vizient Amended Agreement Prices): 2018 - June 2022

## Second Rebuttal Schedule 8.1

## **NOTES / SOURCES:**

Note: Any minor differences are due to rounding.

**[A] Per Second Rebuttal Schedule 13.1.**

**[B] Per Second Rebuttal Schedule 12.0.**

$$[C] = [A] * [B]$$

# Potential EndoWrist Instrument Units, Net Sales Dollars and ASP by Product (Instrument Number) - da Vinci X/Xi (Using Intuitive Sales Volumes and September 2019 Vizient Amended Agreement Prices): 2018 - June 2022

## Second Rebuttal Schedule 8.2

2018	2019	2020	2021	2022	Total	%
				thru June		

## Units

[A]

# Potential EndoWrist Instrument Units, Net Sales Dollars and ASP by Product (Instrument Number) - da Vinci X/Xi (Using Intuitive Sales Volumes and September 2019 Vizient Amended Agreement Prices): 2018 - June 2022

## Second Rebuttal Schedule 8.2

2018	2019	2020	2021	2022	Total	%
				thru June		

[A] Total units [REDACTED]

# Potential EndoWrist Instrument Units, Net Sales Dollars and ASP by Product (Instrument Number) - da Vinci X/Xi (Using Intuitive Sales Volumes and September 2019 Vizient Amended Agreement Prices): 2018 - June 2022

## Second Rebuttal Schedule 8.2

	2018	2019	2020	2021	2022	Total	%
						thru June	
<b>ASP</b>							
[B] 470179	\$1,700	\$1,700	\$1,700	\$1,700	\$1,700	\$1,700	
[B] 470205	\$1,600	\$1,600	\$1,600	\$1,600	\$1,600	\$1,600	
[B] 471205	\$1,600	\$1,600	\$1,600	\$1,600	\$1,600	\$1,600	
[B] 470006	\$1,300	\$1,300	\$1,300	\$1,300	\$1,300	\$1,300	
[B] 470093	\$1,300	\$1,300	\$1,300	\$1,300	\$1,300	\$1,300	
[B] 470309	\$1,300	\$1,300	\$1,300	\$1,300	\$1,300	\$1,300	
[B] 471309	\$1,300	\$1,300	\$1,300	\$1,300	\$1,300	\$1,300	
[B] 470183	\$1,100	\$1,100	\$1,100	\$1,100	\$1,100	\$1,100	
[B] 471093	\$1,300	\$1,300	\$1,300	\$1,300	\$1,300	\$1,300	
[B] 471006	\$1,300	\$1,300	\$1,300	\$1,300	\$1,300	\$1,300	
[B] 470194	\$1,300	\$1,300	\$1,300	\$1,300	\$1,300	\$1,300	
[B] 470049	\$1,100	\$1,100	\$1,100	\$1,100	\$1,100	\$1,100	
[B] 470172	\$1,600	\$1,600	\$1,600	\$1,600	\$1,600	\$1,600	
[B] 471049	\$1,100	\$1,100	\$1,100	\$1,100	\$1,100	\$1,100	
[B] 471172	\$1,600	\$1,600	\$1,600	\$1,600	\$1,600	\$1,600	
[B] 470327	\$1,100	\$1,100	\$1,100	\$1,100	\$1,100	\$1,100	
[B] 470230	\$1,100	\$1,100	\$1,100	\$1,100	\$1,100	\$1,100	
[B] 470318	\$1,300	\$1,300	\$1,300	\$1,300	\$1,300	\$1,300	
[B] 470296	\$1,300	\$1,300	\$1,300	\$1,300	\$1,300	\$1,300	
[B] 471296	\$1,300	\$1,300	\$1,300	\$1,300	\$1,300	\$1,300	
[B] 470184	\$1,100	\$1,100	\$1,100	\$1,100	\$1,100	\$1,100	
[B] 470207	\$1,300	\$1,300	\$1,300	\$1,300	\$1,300	\$1,300	
[B] 470001	\$1,100	\$1,100	\$1,100	\$1,100	\$1,100	\$1,100	
[B] 470344	\$1,600	\$1,600	\$1,600	\$1,600	\$1,600	\$1,600	
[B] 470007	\$1,100	\$1,100	\$1,100	\$1,100	\$1,100	\$1,100	
[B] 470190	\$1,300	\$1,300	\$1,300	\$1,300	\$1,300	\$1,300	

**Potential EndoWrist Instrument Units, Net Sales Dollars and ASP by Product (Instrument Number) - da Vinci X/Xi (Using Intuitive Sales Volumes and September 2019 Vizient Amended Agreement Prices): 2018 - June 2022**

**Second Rebuttal Schedule 8.2**

	2018	2019	2020	2021	2022	Total	%
					thru June		
[B] 471190	\$1,300	\$1,300	\$1,300	\$1,300	\$1,300	\$1,300	
[B] 471344	\$1,600	\$1,600	\$1,600	\$1,600	\$1,600	\$1,600	
[B] 470048	\$1,300	\$1,300	\$1,300	\$1,300	\$1,300	\$1,300	
[B] 470036	\$1,100	\$1,100	\$1,100	\$1,100	\$1,100	\$1,100	
[B] 471048	\$1,300	\$1,300	\$1,300	\$1,300	\$1,300	\$1,300	
[B] 470033	\$1,300	\$1,300	\$1,300	\$1,300	\$1,300	\$1,300	
[B] 470249	\$1,600	\$1,600	\$1,600	\$1,600	\$1,600	\$1,600	
[B] 470171	\$1,600	\$1,600	\$1,600	\$1,600	\$1,600	\$1,600	
[B] 470246	\$1,600	\$1,600	\$1,600	\$1,600	\$1,600	\$1,600	
[B] 471171	\$1,600	\$1,600	\$1,600	\$1,600	\$1,600	\$1,600	
[B] 470215	\$1,300	\$1,300	\$1,300	\$1,300	\$1,300	\$1,300	
[B] 470181	\$1,300	\$1,300	\$1,300	\$1,300	\$1,300	\$1,300	

# Potential EndoWrist Instrument Units, Net Sales Dollars and ASP by Product (Instrument Number) - da Vinci X/Xi (Using Intuitive Sales Volumes and September 2019 Vizient Amended Agreement Prices): 2018 - June 2022

## Second Rebuttal Schedule 8.2

2018	2019	2020	2021	2022	Total	%
				thru June		

## **Net sales dollars**

# Potential EndoWrist Instrument Units, Net Sales Dollars and ASP by Product (Instrument Number) - da Vinci X/Xi (Using Intuitive Sales Volumes and September 2019 Vizient Amended Agreement Prices): 2018 - June 2022

## Second Rebuttal Schedule 8.2

2018	2019	2020	2021	2022 thru June	Total	%
[B] [B] [B] [B] [B] [B] [B] [B] [B] [B] [B] [B] [B] [B] Total net sales dollars						

## **NOTES / SOURCES:**

Note: Any minor differences are due to rounding.

**[A] Per Second Rebuttal Schedule 13.2.**

**[B] Per Second Rebuttal Schedule 12.1.**

$$[C] = [A] * [B]$$

# SIS's Estimated EndoWrist Instrument Repair Cost: 2020 - June 2022

## Second Rebuttal Schedule 9.0

	2020	2021	2022	Total
	thru June			
<b>Actual Intuitive instrument sales units for "Top 5" X/Xi instruments</b>				
[A] 470006 / 471006 (Large Needle Driver)				
[A] 470179 (Hot Shears (Monopolar Curved Scissors))				
[A] 470205 / 471205 (Fenestrated Bipolar Forceps)				
[A] 470093 / 471093 (ProGrasp Forceps)				
[A] 470172 / 471172 (Maryland Bipolar Forceps)				
<b>[B] Total</b>	<b>188,638</b>	<b>213,879</b>	<b>113,918</b>	<b>516,435</b>
<b>Intuitive COGS for refurbishment per unit (SIS's estimated repair cost per unit)</b>				
[C] 470006 / 471006 (Large Needle Driver)				
[C] 470179 (Hot Shears (Monopolar Curved Scissors))				
[C] 470205 / 471205 (Fenestrated Bipolar Forceps)				
[C] 470093 / 471093 (ProGrasp Forceps)				
[C] 470172 / 471172 (Maryland Bipolar Forceps)				
<b>Total Intuitive COGS for refurbishment per unit (SIS's estimated repair cost)</b>	<b>\$27,926,837</b>	<b>\$33,072,546</b>	<b>\$17,812,049</b>	<b>\$78,811,432</b>
<b>[F] SIS's estimated weighted average repair cost per instrument (rounded)</b>	<b>\$148.00</b>	<b>\$155.00</b>	<b>\$156.00</b>	<b>\$153.00</b>

# SIS's Estimated EndoWrist Instrument Repair Cost: 2020 - June 2022 Second Rebuttal Schedule 9.0

## NOTES / SOURCES:

Note: Any minor differences are due to rounding.

[A] Per Second Rebuttal Schedule 9.1.

[B] Sum of [A]

[C] Intuitive anticipated refurbishment costs are per Morales 30(b)(6) Dep. at Ex. 143 (Intuitive 00626597-626616 at 626612). For purposes of my analysis, I assume SIS's repair costs per unit would have approximated Intuitive anticipated refurbishment cost per unit. However, based on discussions with Greg Posdal, I understand SIS's material cost would generally fall below \$10 per unit, less than Intuitive's anticipated \$48 to \$141 per unit. Instrument numbers identified per comparison of Morales 30(b)(6) Dep. Ex. 141 (at pdf page 3) and Morales 30(b)(6) Dep. at Ex. 143 (Intuitive 00626597-626616 at 626612). For purposes of my analysis, I assume the Intuitive cost for the "replacement" instrument number is the same as the amount shown for the "original" instrument number.

[D] = [A] \* [C]

[E] Sum of [D]

[F] = [E] / [B]

# Intuitive's "Top 5" X/Xi EndoWrist Instrument Units: 2018 - June 2022 Second Rebuttal Schedule 9.1

2018	2019	2020	2021	2022	Total
				thru June	

[A]  
[A]  
[B]

[A]

[A]  
[A]  
[B]

[A]  
[A]  
[B]

[A]  
[A]  
[B]

## NOTES / SOURCES:

Note: Any minor differences are due to rounding.

[A] Per Second Rebuttal Schedule 13.2. Instrument numbers identified based on Instrument numbers identified per comparison of Morales 30(b)(6) Dep. Ex. 141 (at pdf page 3). For purposes of this analysis, I also include the "replacement" instrument number.

[B] Calculated based on the amounts herein.

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# SIS's Estimated Interceptor Chip Cost (Based on Rebotix's Sales to Restore)

## Second Rebuttal Schedule 10.0

Date	Memo	Item	Quantity	Sale Price	Amount
[A] 5/15/2019	Interceptor assembly programmed with 10 Uses	Interceptor-010 (Interceptor assembly programmed with 10 Uses)	30	\$800	\$24,000
[A] 5/15/2019	New Customer Repair Credits	Discount		(\$10,400)	(\$10,400)
[A] 9/4/2019	Interceptor assembly programmed with 10 Uses	Interceptor-010 (Interceptor assembly programmed with 10 Uses)	25	\$800	\$20,000
[A] 9/4/2019	Less Credit for providing 7 free units to new customers	Discount		(\$5,600)	(\$5,600)
[A] 10/15/2019	Interceptor assembly programmed with 10 Uses	Interceptor-010 (Interceptor assembly programmed with 10 Uses)	5	\$800	\$4,000
<b>[B] Total</b>			<b>60</b>		<b>\$32,000</b>
<b>[C] Average cost per Interceptor chip (rounded) based on limited volumes</b>					<b>\$533.00</b>
<b>[D] Average cost per Interceptor chip</b>					<b>\$350.00</b>

### NOTES / SOURCES:

Note: Any minor differences are due to rounding.

[A] Per REBOTIX175326. Calculation above is based on Rebotix's sales to Restore.

[B] Sum of [A]

[C] = Amount per [B] / Quantity per [B]. Based on this limited volume, I now use the Average cost per Interceptor chip as described in [D].

[D] In January 2020, a Memorandum of Understanding was drafted between SIS and Rebotix, which contained proposed pricing terms for Interceptor chips, including a maximum price per Interceptor chip of \$800 and volume discounts up to \$450 per Interceptor chip at 300 units (Gibson Dep. Ex.'s 13 and 14) (*Rebotix Repair LLC v. Intuitive Surgical, Inc.*, No. 8:20-cv-02274-VMC-TGW (M.D. Fla. filed Sept. 28, 2020)). Per discussion with Chris Gibson and as described in my report, volume discounts for thousands of annual units would have been greater than \$450 per chip. This means the Interceptor chip prices (i.e., SIS's costs) would have been, at most, the net \$350 cost. Rebotix's Interceptor chip prices (net of volume discounts) would have likely been less than \$350 per chip to SIS. They would have likely been \$200 to \$300 per chip at SIS purchase volumes approaching 50,000 annual chips. For purposes of my analysis, I use \$350 as the average cost per Interceptor chip.

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# Rebotix Sales to SIS: June 27, 2019 - November 21, 2019

## Second Rebuttal Schedule 10.1

Date	Num	Memo	Item	Quantity	Sale Price	Amount
[A] 6/27/2019	26674	Mega SutureCut Needle Driver EndoWrist Repair Service	420309-SVC (Mega SutureCut Needle Driver EndoWrist Repair Service)	1	\$900	\$900
[A] 6/27/2019	26674	New Customer Discount	Discount		(\$900)	(\$900)
[A] 7/17/2019	26680	Mega SutureCut Needle Driver EndoWrist Repair Service	420309-SVC (Mega SutureCut Needle Driver EndoWrist Repair Service)	1	\$900	\$900
[A] 8/8/2019	26696	Monopolar Curved Scissors EndoWrist Repair Service	420179-SVC (Monopolar Curved Scissors EndoWrist Repair Service)	1	\$1,300	\$1,300
[A] 8/8/2019	26696	Fenestrated Bipolar Forceps EndoWrist Repair Service	420205-SVC (Fenestrated Bipolar Forceps EndoWrist Repair Service)	1	\$1,200	\$1,200
[A] 8/8/2019	26696	ProGrasp Forceps EndoWrist Repair Service	420093-SVC (ProGrasp Forceps EndoWrist Repair Service)	1	\$900	\$900
[A] 8/8/2019	26696	Mega Needle Driver EndoWrist Repair Service	420194-SVC (Mega Needle Driver EndoWrist Repair Service)	1	\$900	\$900
[A] 8/8/2019	26696	Trial Wrists	Discount		(\$4,300)	(\$4,300)
[A] 9/9/2019	26702	Small Grasping Retractor EndoWrist Repair Service	420318-SVC (Small Grasping Retractor EndoWrist Repair Service)	1	\$900	\$900
[A] 9/9/2019	26702	Small Grasping Retractor EndoWrist Repair Service	420318-SVC (Small Grasping Retractor EndoWrist Repair Service)	1	\$900	\$900
[A] 9/9/2019	26702	Large Needle Driver EndoWrist Repair Service	420006-SVC (Large Needle Driver EndoWrist Repair Service)	1	\$900	\$900
[A] 9/9/2019	26702	Cadiere Forceps EndoWrist Repair Service	420049-SVC (Cadiere Forceps EndoWrist Repair Service)	1	\$750	\$750
[A] 9/9/2019	26702	ProGrasp Forceps EndoWrist Repair Service	420093-SVC (ProGrasp Forceps EndoWrist Repair Service)	1	\$900	\$900
[A] 9/9/2019	26702	Maryland Bipolar Forceps EndoWrist Repair Service	420172-SVC (Maryland Bipolar Forceps EndoWrist Repair Service)	0	\$1,200	\$0
[A] 9/9/2019	26702	Maryland Bipolar Forceps EndoWrist Repair Service	420172-SVC (Maryland Bipolar Forceps EndoWrist Repair Service)	0	\$1,200	\$0
[A] 9/9/2019	26702	Maryland Bipolar Forceps EndoWrist Repair Service	420172-SVC (Maryland Bipolar Forceps EndoWrist Repair Service)	0	\$1,200	\$0
[A] 10/8/2019	26738	Cadiere Forceps EndoWrist Repair Service	420049-SVC (Cadiere Forceps EndoWrist Repair Service)	0	\$750	\$0
[A] 10/8/2019	26738	Cadiere Forceps EndoWrist Repair Service	420049-SVC (Cadiere Forceps EndoWrist Repair Service)	1	\$750	\$750
[A] 10/8/2019	26738	ProGrasp Forceps EndoWrist Repair Service	420093-SVC (ProGrasp Forceps EndoWrist Repair Service)	1	\$900	\$900
[A] 10/18/2019	26746	Maryland Bipolar Forceps EndoWrist Repair Service	420172-SVC (Maryland Bipolar Forceps EndoWrist Repair Service)	1	\$1,200	\$1,200
[A] 10/18/2019	26746	Large SutureCut Needle Driver EndoWrist Repair Service	420296-SVC (Large SutureCut Needle Driver EndoWrist Repair Service)	1	\$900	\$900
[A] 10/18/2019	26746	Mega Needle Driver EndoWrist Repair Service	420194-SVC (Mega Needle Driver EndoWrist Repair Service)	1	\$900	\$900
[A] 10/18/2019	26746	Mega Needle Driver EndoWrist Repair Service	420194-SVC (Mega Needle Driver EndoWrist Repair Service)	1	\$900	\$900
[A] 10/18/2019	26746	DeBakey Forceps EndoWrist Repair Service	420036-SVC (DeBakey Forceps EndoWrist Repair Service)	1	\$750	\$750
[A] 10/25/2019	26748	Large Needle Driver EndoWrist Repair Service	420006-SVC (Large Needle Driver EndoWrist Repair Service)	0	\$900	\$0
[A] 10/25/2019	26748	Used EndoWrist Instrument	EndoWrist (Used EndoWrist Instrument)	1	\$100	\$100
[A] 10/25/2019	26748	Large Needle Driver EndoWrist Repair Service	420006-SVC (Large Needle Driver EndoWrist Repair Service)	1	\$900	\$900
[A] 10/25/2019	26748	Estimate 26748:	Discount		(\$100)	(\$100)
[A] 10/25/2019	26749	Fenestrated Bipolar Forceps EndoWrist Repair Service	420205-SVC (Fenestrated Bipolar Forceps EndoWrist Repair Service)	0	\$1,200	\$0
[A] 10/25/2019	26749	Used EndoWrist Instrument	EndoWrist (Used EndoWrist Instrument)	1	\$100	\$100
[A] 10/25/2019	26749	Fenestrated Bipolar Forceps EndoWrist Repair Service	420205-SVC (Fenestrated Bipolar Forceps EndoWrist Repair Service)	1	\$1,200	\$1,200
[A] 10/25/2019	26749	Estimate 26749:	Discount		(\$100)	(\$100)
[A] 10/25/2019	26750	PK Dissecting Forceps EndoWrist Repair Service	420227-SVC (PK Dissecting Forceps EndoWrist Repair Service)	1	\$1,200	\$1,200
[A] 10/25/2019	26751	ProGrasp Forceps EndoWrist Repair Service	420093-SVC (ProGrasp Forceps EndoWrist Repair Service)	1	\$900	\$900
[A] 10/25/2019	26752	ProGrasp Forceps EndoWrist Repair Service	420093-SVC (ProGrasp Forceps EndoWrist Repair Service)	1	\$900	\$900
[A] 10/31/2019	26754	Large SutureCut Needle Driver EndoWrist Repair Service	420296-SVC (Large SutureCut Needle Driver EndoWrist Repair Service)	1	\$900	\$900
[A] 10/31/2019	26754	Cadiere Forceps EndoWrist Repair Service	420049-SVC (Cadiere Forceps EndoWrist Repair Service)	1	\$750	\$750
[A] 10/31/2019	26755	Large Needle Driver EndoWrist Repair Service	420006-SVC (Large Needle Driver EndoWrist Repair Service)	1	\$900	\$900
[A] 10/31/2019	26756	Large Needle Driver EndoWrist Repair Service	420006-SVC (Large Needle Driver EndoWrist Repair Service)	1	\$900	\$900
[A] 11/12/2019	26760	Large Clip Applier EndoWrist Repair Service	420230-SVC (Large Clip Applier EndoWrist Repair Service)	1	\$750	\$750
[A] 11/12/2019	26760	Maryland Bipolar Forceps EndoWrist Repair Service	420172-SVC (Maryland Bipolar Forceps EndoWrist Repair Service)	1	\$1,200	\$1,200
[A] 11/12/2019	26760	Mega SutureCut Needle Driver EndoWrist Repair Service	420309-SVC (Mega SutureCut Needle Driver EndoWrist Repair Service)	1	\$900	\$900
[A] 11/12/2019	26760	Monopolar Curved Scissors EndoWrist Repair Service	420179-SVC (Monopolar Curved Scissors EndoWrist Repair Service)	1	\$1,300	\$1,300
[A] 11/12/2019	26760	Cadiere Forceps EndoWrist Repair Service	420049-SVC (Cadiere Forceps EndoWrist Repair Service)	0	\$750	\$0
[A] 11/12/2019	26760	Monopolar Curved Scissors EndoWrist Repair Service	420179-SVC (Monopolar Curved Scissors EndoWrist Repair Service)	0	\$1,300	\$0
[A] 11/12/2019	26760	Mega Needle Driver EndoWrist Repair Service	420194-SVC (Mega Needle Driver EndoWrist Repair Service)	0	\$900	\$0
[A] 11/12/2019	26760	Large Clip Applier EndoWrist Repair Service	420230-SVC (Large Clip Applier EndoWrist Repair Service)	0	\$750	\$0
[A] 11/12/2019	26760	Used EndoWrist Instrument	EndoWrist (Used EndoWrist Instrument)	4	\$100	\$400
[A] 11/12/2019	26760	Cadiere Forceps EndoWrist Repair Service	420049-SVC (Cadiere Forceps EndoWrist Repair Service)	1	\$750	\$750
[A] 11/12/2019	26760	Monopolar Curved Scissors EndoWrist Repair Service	420179-SVC (Monopolar Curved Scissors EndoWrist Repair Service)	1	\$1,300	\$1,300
[A] 11/12/2019	26760	Mega Needle Driver EndoWrist Repair Service	420194-SVC (Mega Needle Driver EndoWrist Repair Service)	1	\$900	\$900
[A] 11/12/2019	26760	Large Clip Applier EndoWrist Repair Service	420230-SVC (Large Clip Applier EndoWrist Repair Service)	1	\$750	\$750
[A] 11/12/2019	26760	New Customer Discount	Discount		(\$400)	(\$400)
[A] 11/20/2019	26762	Large Needle Driver EndoWrist Repair Service	420006-SVC (Large Needle Driver EndoWrist Repair Service)	1	\$900	\$900

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# Rebotix Sales to SIS: June 27, 2019 - November 21, 2019

## Second Rebuttal Schedule 10.1

Date	Num	Memo	Item	Quantity	Sale Price	Amount
[A] 11/21/2019	26763	Large Clip Applier EndoWrist Repair Service	420230-SVC (Large Clip Applier EndoWrist Repair Service)	1	\$750	\$750
[A] 11/21/2019	26763	Monopolar Curved Scissors EndoWrist Repair Service	420179-SVC (Monopolar Curved Scissors EndoWrist Repair Service)	1	\$1,300	\$1,300
[A] 11/21/2019	26763	Fenestrated Bipolar Forceps EndoWrist Repair Service	420205-SVC (Fenestrated Bipolar Forceps EndoWrist Repair Service)	1	\$1,200	\$1,200
[A] 11/21/2019	26763	Monopolar Curved Scissors EndoWrist Repair Service	420179-SVC (Monopolar Curved Scissors EndoWrist Repair Service)	1	\$1,300	\$1,300
[A] 11/21/2019	26763	Maryland Bipolar Forceps EndoWrist Repair Service	420172-SVC (Maryland Bipolar Forceps EndoWrist Repair Service)	1	\$1,200	\$1,200
[A] 11/21/2019	26763	Tenaculum Forceps EndoWrist Repair Service	420207-SVC (Tenaculum Forceps EndoWrist Repair Service)	0	\$900	\$0
[A] 11/21/2019	26763	Used EndoWrist Instrument	EndoWrist (Used EndoWrist Instrument)	1	\$100	\$100
[A] 11/21/2019	26763	New Customer Discount	Discount			(\$100)
[A] 11/21/2019	26763	Tenaculum Forceps EndoWrist Repair Service	420207-SVC (Tenaculum Forceps EndoWrist Repair Service)	1	\$900	\$900
<b>[B] Total</b>				<b>49</b>		<b>\$35,500</b>

**NOTES / SOURCES:**

Note: Any minor differences are due to rounding.

[A] Summarized per REBOTIX175326.

[B] Sum of [A].

# Potential EndoWrist Instrument Units, Costs and Costs per Unit by System (Using Intuitive Sales Volumes and Rebotix Pricing): 2018 - June 2022

## Second Rebuttal Schedule 11.0

	2018	2019	2020	2021	2022 thru June	Total	%
<b>Units</b>							
[A] da Vinci S/Si							
[B] da Vinci X/Xi							
[C] Total							
<b>Costs</b>							
[A] da Vinci S/Si							
[B] da Vinci X/Xi							
[C] Total							
<b>Cost per unit</b>							
[D] da Vinci S/Si	\$587	\$588	\$593	\$605	\$589	\$590	
[D] da Vinci X/Xi	\$576	\$569	\$573	\$584	\$591	\$578	
[D] Total	<b>\$581</b>	<b>\$575</b>	<b>\$576</b>	<b>\$585</b>	<b>\$591</b>	<b>\$580</b>	

### NOTES / SOURCES:

Note: Any minor differences are due to rounding.

[A] Per Second Rebuttal Schedule 11.1.

[B] Per Second Rebuttal Schedule 11.2.

[C] = [A] + [B]

[D] Calculated based on the amounts herein.

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# Potential EndoWrist Instrument Units, Costs and Costs per Unit by Product (Instrument Number) - da Vinci S/Si (Using Intuitive Sales Volumes and Rebotix Pricing): 2018 - June 2022

## Second Rebuttal Schedule 11.1

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# Potential EndoWrist Instrument Units, Costs and Costs per Unit by Product (Instrument Number) - da Vinci S/Si (Using Intuitive Sales Volumes and Rebotix Pricing): 2018 - June 2022

## Second Rebuttal Schedule 11.1

	2018	2019	2020	2021	2022	Total	%
							thru June

[A]							
[A]							
[A]							
[A]							
[A]							
[A]							
[A]							
[A]							
[A] Total units							

Cost per unit
---------------

[B] 420179	\$850	\$850	\$850	\$850	\$850	\$850
[B] 420006	\$450	\$450	\$450	\$450	\$450	\$450
[B] 420093	\$450	\$450	\$450	\$450	\$450	\$450
[B] 420205	\$750	\$750	\$750	\$750	\$750	\$750
[B] 420309	\$450	\$450	\$450	\$450	\$450	\$450
[B] 420194	\$450	\$450	\$450	\$450	\$450	\$450
[B] 420172	\$750	\$750	\$750	\$750	\$750	\$750
[B] 420049	\$300	\$300	\$300	\$300	\$300	\$300
[B] 420227	\$750	\$750	\$750	\$750	\$750	\$750
[B] 420183	\$300	\$300	\$300	\$300	\$300	\$300
[B] 420296	\$450	\$450	\$450	\$450	\$450	\$450
[B] 420230	\$300	\$300	\$300	\$300	\$300	\$300
[B] 420184	\$300	\$300	\$300	\$300	\$300	\$300
[B] 420327	\$300	\$300	\$300	\$300	\$300	\$300
[B] 420207	\$450	\$450	\$450	\$450	\$450	\$450
[B] 420190	\$450	\$450	\$450	\$450	\$450	\$450
[B] 420189	\$300	\$300	\$300	\$300	\$300	\$300
[B] 420110	\$750	\$750	\$750	\$750	\$750	\$750
[B] 420048	\$450	\$450	\$450	\$450	\$450	\$450
[B] 420318	\$450	\$450	\$450	\$450	\$450	\$450

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# Potential EndoWrist Instrument Units, Costs and Costs per Unit by Product (Instrument Number) - da Vinci S/Si (Using Intuitive Sales Volumes and Rebotix Pricing): 2018 - June 2022

## Second Rebuttal Schedule 11.1

	2018	2019	2020	2021	2022	Total	%
						thru June	
[B] 420003		\$450	\$450	\$450	\$450	\$450	
[B] 420001		\$300	\$300	\$300	\$300	\$300	
[B] 420007		\$300	\$300	\$300	\$300	\$300	
[B] 420278		\$450	\$450	\$450	\$450	\$450	
[B] 420344		\$750	\$750	\$750	\$750	\$750	
[B] 420033		\$450	\$450	\$450	\$450	\$450	
[B] 420036		\$300	\$300	\$300	\$300	\$300	
[B] 420178		\$300	\$300	\$300	\$300	\$300	
[B] 420171		\$750	\$750	\$750	\$750	\$750	
[B] 420246		\$750	\$750	\$750	\$750	\$750	
[B] 420249		\$750	\$750	\$750	\$750	\$750	
[B] 420181		\$450	\$450	\$450	\$450	\$450	
[B] 420157		\$450	\$450	\$450	\$450	\$450	
[B] 420204		\$750	\$750	\$750	\$750	\$750	
[B] 420121		\$750	\$750	\$750	\$750	\$750	
[B] 420215		\$450	\$450	\$450	\$450	\$450	
[B] 420203		\$450	\$450	\$450	\$450	\$450	
[B] 420192		\$300	\$300	\$300	\$300	\$300	

**Costs**

[C]

HIGHLY CONFIDENTIAL - ATTORNEYS' EYES ONLY

# Potential EndoWrist Instrument Units, Costs and Costs per Unit by Product (Instrument Number) - da Vinci S/Si (Using Intuitive Sales Volumes and Rebotix Pricing): 2018 - June 2022

## Second Rebuttal Schedule 11.1

2018	2019	2020	2021	2022 thru June	Total	%

HIGHLY CONFIDENTIAL - ATTORNEYS' EYES ONLY

# Potential EndoWrist Instrument Units, Costs and Costs per Unit by Product (Instrument Number) - da Vinci S/Si (Using Intuitive Sales Volumes and Rebotix Pricing): 2018 - June 2022

## Second Rebuttal Schedule 11.1

2018	2019	2020	2021	2022	Total	%
						thru June

**NOTES / SOURCES:**

Note: Any minor differences are due to rounding.

- [A] Per Second Rebuttal Schedule 13.1.
- [B] Per Second Rebuttal Schedule 12.0.
- [C] = [A] \* [B]

HIGHLY CONFIDENTIAL - ATTORNEYS' EYES ONLY

# Potential EndoWrist Instrument Units, Costs and Costs per Unit by Product (Instrument Number) - da Vinci X/Xi (Using Intuitive Sales Volumes and Rebotix Pricing): 2018 - June 2022

## Second Rebuttal Schedule 11.2

HIGHLY CONFIDENTIAL - ATTORNEYS' EYES ONLY

# Potential EndoWrist Instrument Units, Costs and Costs per Unit by Product (Instrument Number) - da Vinci X/Xi (Using Intuitive Sales Volumes and Rebotix Pricing): 2018 - June 2022

## Second Rebuttal Schedule 11.2

	2018	2019	2020	2021	2022	Total	%
							thru June
[A]							
[A]							
[A]							
[A]							
[A]							
[A]							
[A]							
[A]							
[A]							
[A]							
[A]							
[A] Total units							
<b>Cost per unit</b>							
[B] 470179	\$850	\$850	\$850	\$850	\$850	\$850	
[B] 470205	\$750	\$750	\$750	\$750	\$750	\$750	
[B] 471205	\$750	\$750	\$750	\$750	\$750	\$750	
[B] 470006	\$450	\$450	\$450	\$450	\$450	\$450	
[B] 470093	\$450	\$450	\$450	\$450	\$450	\$450	
[B] 470309	\$450	\$450	\$450	\$450	\$450	\$450	
[B] 471309	\$450	\$450	\$450	\$450	\$450	\$450	
[B] 470183	\$300	\$300	\$300	\$300	\$300	\$300	
[B] 471093	\$450	\$450	\$450	\$450	\$450	\$450	
[B] 471006	\$450	\$450	\$450	\$450	\$450	\$450	
[B] 470194	\$450	\$450	\$450	\$450	\$450	\$450	
[B] 470049	\$300	\$300	\$300	\$300	\$300	\$300	
[B] 470172	\$750	\$750	\$750	\$750	\$750	\$750	
[B] 471049	\$300	\$300	\$300	\$300	\$300	\$300	
[B] 471172	\$750	\$750	\$750	\$750	\$750	\$750	
[B] 470327	\$300	\$300	\$300	\$300	\$300	\$300	
[B] 470230	\$300	\$300	\$300	\$300	\$300	\$300	
[B] 470318	\$450	\$450	\$450	\$450	\$450	\$450	
[B] 470296	\$450	\$450	\$450	\$450	\$450	\$450	
[B] 471296	\$450	\$450	\$450	\$450	\$450	\$450	

HIGHLY CONFIDENTIAL - ATTORNEYS' EYES ONLY

# Potential EndoWrist Instrument Units, Costs and Costs per Unit by Product (Instrument Number) - da Vinci X/Xi (Using Intuitive Sales Volumes and Rebotix Pricing): 2018 - June 2022

## Second Rebuttal Schedule 11.2

	2018	2019	2020	2021	2022	Total	%
						thru June	
[B] 470184	\$300	\$300	\$300	\$300	\$300	\$300	
[B] 470207	\$450	\$450	\$450	\$450	\$450	\$450	
[B] 470001	\$300	\$300	\$300	\$300	\$300	\$300	
[B] 470344	\$750	\$750	\$750	\$750	\$750	\$750	
[B] 470007	\$300	\$300	\$300	\$300	\$300	\$300	
[B] 470190	\$450	\$450	\$450	\$450	\$450	\$450	
[B] 471190	\$450	\$450	\$450	\$450	\$450	\$450	
[B] 471344	\$750	\$750	\$750	\$750	\$750	\$750	
[B] 470048	\$450	\$450	\$450	\$450	\$450	\$450	
[B] 470036	\$300	\$300	\$300	\$300	\$300	\$300	
[B] 471048	\$450	\$450	\$450	\$450	\$450	\$450	
[B] 470033	\$450	\$450	\$450	\$450	\$450	\$450	
[B] 470249	\$750	\$750	\$750	\$750	\$750	\$750	
[B] 470171	\$750	\$750	\$750	\$750	\$750	\$750	
[B] 470246	\$750	\$750	\$750	\$750	\$750	\$750	
[B] 471171	\$750	\$750	\$750	\$750	\$750	\$750	
[B] 470215	\$450	\$450	\$450	\$450	\$450	\$450	
[B] 470181	\$450	\$450	\$450	\$450	\$450	\$450	

**Costs**

[C]  
[C]

HIGHLY CONFIDENTIAL - ATTORNEYS' EYES ONLY

# Potential EndoWrist Instrument Units, Costs and Costs per Unit by Product (Instrument Number) - da Vinci X/Xi (Using Intuitive Sales Volumes and Rebotix Pricing): 2018 - June 2022

## Second Rebuttal Schedule 11.2

2018	2019	2020	2021	2022 thru June	Total	%

HIGHLY CONFIDENTIAL - ATTORNEYS' EYES ONLY

# Potential EndoWrist Instrument Units, Costs and Costs per Unit by Product (Instrument Number) - da Vinci X/Xi (Using Intuitive Sales Volumes and Rebotix Pricing): 2018 - June 2022

## Second Rebuttal Schedule 11.2

2018	2019	2020	2021	2022	Total	%
				thru June		

### NOTES / SOURCES:

Note: Any minor differences are due to rounding.

- [A] Per Second Rebuttal Schedule 13.2.
- [B] Per Second Rebuttal Schedule 12.1.
- [C] = [A] \* [B]

# SIS's EndoWrist Instrument Sales Prices and Costs (from Rebotix) - da Vinci S/Si Second Rebuttal Schedule 12.0

[1] Instrument Number	[1] Description	[1] SIS sales price	[2] SIS cost from Rebotix	[3] Discount	[4] SIS cost (net of volume discounts from Rebotix)
420179	Hot Shears (Monopolar Curved Scissors)	\$1,700	\$1,300	\$450	\$850
420110	PreCise Bipolar Forceps	\$1,600	\$1,200	\$450	\$750
420121	Fine Tissue Forceps	\$1,600	\$1,200	\$450	\$750
420171	Micro Bipolar Forceps	\$1,600	\$1,200	\$450	\$750
420172	Maryland Bipolar Forceps	\$1,600	\$1,200	\$450	\$750
420204	Atrial Retractor	\$1,600	\$1,200	\$450	\$750
420205	Fenestrated Bipolar Forceps	\$1,600	\$1,200	\$450	\$750
420227	PK® Dissecting Forceps	\$1,600	\$1,200	\$450	\$750
420246	Atrial Retractor Short Right	\$1,600	\$1,200	\$450	\$750
420249	Dual Blade Retractor	\$1,600	\$1,200	\$450	\$750
420344	Curved Bipolar Dissector	\$1,600	\$1,200	\$450	\$750
420003	Small Clip Applier	\$1,300	\$900	\$450	\$450
420006	Large Needle Driver	\$1,300	\$900	\$450	\$450
420033	Black Diamond Micro Forceps	\$1,300	\$900	\$450	\$450
420048	Long Tip Forceps	\$1,300	\$900	\$450	\$450
420093	ProGrasp Forceps	\$1,300	\$900	\$450	\$450
420157	Snap-fit™ Scalpel Instrument	\$1,300	\$900	\$450	\$450
420181	Resano Forceps	\$1,300	\$900	\$450	\$450
420190	Cobra Grasper	\$1,300	\$900	\$450	\$450

# SIS's EndoWrist Instrument Sales Prices and Costs (from Rebotix) - da Vinci S/Si Second Rebuttal Schedule 12.0

[1] Instrument Number	[1] Description	[1] SIS sales price	[2] SIS cost from Rebotix	[3] Discount	[4] SIS cost (net of volume discounts from Rebotix)
420194	Mega Needle Driver	\$1,300	\$900	\$450	\$450
420203	Pericardial Dissector	\$1,300	\$900	\$450	\$450
420207	Tenaculum Forceps	\$1,300	\$900	\$450	\$450
420215	Cardiac Probe Grasper	\$1,300	\$900	\$450	\$450
420278	Graptor (Grasping Retractor)	\$1,300	\$900	\$450	\$450
420296	Large SutureCut™ Needle Driver	\$1,300	\$900	\$450	\$450
420309	Mega™ SutureCut™ Needle Driver	\$1,300	\$900	\$450	\$450
420318	Small Graptor (Grasping Retractor)	\$1,300	\$900	\$450	\$450
420001	Potts Scissors	\$1,100	\$750	\$450	\$300
420007	Round Tip Scissors	\$1,100	\$750	\$450	\$300
420036	DeBakey Forceps	\$1,100	\$750	\$450	\$300
420049	Cadiere Forceps	\$1,100	\$750	\$450	\$300
420178	Curved Scissors	\$1,100	\$750	\$450	\$300
420183	Permanent Cautery Hook	\$1,100	\$750	\$450	\$300
420184	Permanent Cautery Spatula	\$1,100	\$750	\$450	\$300
420189	Double Fenestrated Grasper	\$1,100	\$750	\$450	\$300
420192	Valve Hook	\$1,100	\$750	\$450	\$300
420230	Large Clip Applier	\$1,100	\$750	\$450	\$300
420327	Medium-Large Clip Applier	\$1,100	\$750	\$450	\$300

# SIS's EndoWrist Instrument Sales Prices and Costs (from Rebotix) - da Vinci S/Si Second Rebuttal Schedule 12.0

[1] Instrument Number	[1] Description	[1] SIS sales price	[2] SIS cost from Rebotix	[3] Discount	[4] SIS cost (net of volume discounts from Rebotix)

## NOTES / SOURCES:

- [1] Per SIS000047-49. See also, Keith Johnson Dep. Ex. 137 (at SIS097181), SIS000035-45 at 44 and SIS000024. Prices shown above are also consistent with prices shown on Second Rebuttal Schedule 14.0, representing actual sales from SIS to
- [2] Per REBOTIX162208-162212 at 212. Prices above reflect the distributor price offered by Rebotix to distributors. See also, Second Rebuttal Schedule 10.1 showing sales from Rebotix to SIS.
- [3] In January 2020, a Memorandum of Understanding was drafted between SIS and Rebotix, which contained proposed pricing terms for Interceptor chips, including volume discounts up to \$450 per Interceptor chip at 300 units (Gibson Dep. Ex. 14) (*Rebotix Repair LLC v. Intuitive Surgical, Inc.*, No. 8:20-cv-02274-VMC-TGW (M.D. Fla. filed Sept. 28, 2020)). Per discussion with Chris Gibson and as described in my report, volume discounts for thousands of annual units would have been greater than \$450 per chip. For purposes of my analysis, I apply a \$450 discount herein.
- [4] = [2] - [3]

HIGHLY CONFIDENTIAL - ATTORNEYS' EYES ONLY

# SIS's EndoWrist Instrument Sales Prices and Costs (from Rebotix) - da Vinci X/Xi Second Rebuttal Schedule 12.1

Instrument Number	Description	Source of Identification	SIS sales price	SIS cost from Rebotix	Discount	SIS cost (net of volume discounts from Rebotix)
			[1]	[2]	[3]	[4]
470179	Hot Shears (Monopolar Curved Scissors)	Corresponding Da Vinci S/Si Material Number per Second Rebuttal Schedule 12.0 - 420179	\$1,700	\$1,300	\$450	\$850
470110	PreCise Bipolar Forceps	Corresponding Da Vinci S/Si Material Number per Second Rebuttal Schedule 12.0 - 420110	\$1,600	\$1,200	\$450	\$750
470121	Fine Tissue Forceps	Corresponding Da Vinci S/Si Material Number per Second Rebuttal Schedule 12.0 - 420121	\$1,600	\$1,200	\$450	\$750
470171	Micro Bipolar Forceps	Corresponding Da Vinci S/Si Material Number per Second Rebuttal Schedule 12.0 - 420171	\$1,600	\$1,200	\$450	\$750
471171	Micro Bipolar Forceps	Da Vinci X/Xi Instrument & Accessory Catalog October 2021	\$1,600	\$1,200	\$450	\$750
470172	Maryland Bipolar Forceps	Corresponding Da Vinci S/Si Material Number per Second Rebuttal Schedule 12.0 - 420172	\$1,600	\$1,200	\$450	\$750
471172	Maryland Bipolar Forceps	Da Vinci X/Xi Instrument & Accessory Catalog October 2021	\$1,600	\$1,200	\$450	\$750
470204	Atrial Retractor	Corresponding Da Vinci S/Si Material Number per Second Rebuttal Schedule 12.0 - 420204	\$1,600	\$1,200	\$450	\$750
470205	Fenestrated Bipolar Forceps	Corresponding Da Vinci S/Si Material Number per Second Rebuttal Schedule 12.0 - 420205	\$1,600	\$1,200	\$450	\$750
471205	Fenestrated Bipolar Forceps	Da Vinci X/Xi Instrument & Accessory Catalog October 2021	\$1,600	\$1,200	\$450	\$750
470227	PK® Dissecting Forceps	Corresponding Da Vinci S/Si Material Number per Second Rebuttal Schedule 12.0 - 420227	\$1,600	\$1,200	\$450	\$750
470246	Atrial Retractor Short Right	Corresponding Da Vinci S/Si Material Number per Second Rebuttal Schedule 12.0 - 420246	\$1,600	\$1,200	\$450	\$750
470249	Dual Blade Retractor	Corresponding Da Vinci S/Si Material Number per Second Rebuttal Schedule 12.0 - 420249	\$1,600	\$1,200	\$450	\$750
470344	Curved Bipolar Dissector	Corresponding Da Vinci S/Si Material Number per Second Rebuttal Schedule 12.0 - 420344	\$1,600	\$1,200	\$450	\$750
471344	Curved Bipolar Dissector	Da Vinci X/Xi Instrument & Accessory Catalog October 2021	\$1,600	\$1,200	\$450	\$750
470003	Small Clip Applier	Corresponding Da Vinci S/Si Material Number per Second Rebuttal Schedule 12.0 - 420003	\$1,300	\$900	\$450	\$450
470006	Large Needle Driver	Corresponding Da Vinci S/Si Material Number per Second Rebuttal Schedule 12.0 - 420006	\$1,300	\$900	\$450	\$450
471006	Large Needle Driver	Da Vinci X/Xi Instrument & Accessory Catalog October 2021	\$1,300	\$900	\$450	\$450
470033	Black Diamond Micro Forceps	Corresponding Da Vinci S/Si Material Number per Second Rebuttal Schedule 12.0 - 420033	\$1,300	\$900	\$450	\$450
470048	Long Tip Forceps	Corresponding Da Vinci S/Si Material Number per Second Rebuttal Schedule 12.0 - 420048	\$1,300	\$900	\$450	\$450
471048	Long Tip Forceps	Da Vinci X/Xi Instrument & Accessory Catalog October 2021	\$1,300	\$900	\$450	\$450
470093	ProGrasp Forceps	Corresponding Da Vinci S/Si Material Number per Second Rebuttal Schedule 12.0 - 420093	\$1,300	\$900	\$450	\$450
471093	ProGrasp Forceps	Da Vinci X/Xi Instrument & Accessory Catalog October 2021	\$1,300	\$900	\$450	\$450
470157	Snap-fit™ Scalpel Instrument	Corresponding Da Vinci S/Si Material Number per Second Rebuttal Schedule 12.0 - 420157	\$1,300	\$900	\$450	\$450
470181	Resano Forceos	Corresponding Da Vinci S/Si Material Number per Second Rebuttal Schedule 12.0 - 420181	\$1,300	\$900	\$450	\$450
470190	Cobra Grasper	Corresponding Da Vinci S/Si Material Number per Second Rebuttal Schedule 12.0 - 420190	\$1,300	\$900	\$450	\$450
471190	Cobra Grasper	Da Vinci X/Xi Instrument & Accessory Catalog October 2021	\$1,300	\$900	\$450	\$450
470194	Mega Needle Driver	Corresponding Da Vinci S/Si Material Number per Second Rebuttal Schedule 12.0 - 420194	\$1,300	\$900	\$450	\$450
470203	Pericardial Dissector	Corresponding Da Vinci S/Si Material Number per Second Rebuttal Schedule 12.0 - 420203	\$1,300	\$900	\$450	\$450
470207	Tenaculum Forceos	Corresponding Da Vinci S/Si Material Number per Second Rebuttal Schedule 12.0 - 420207	\$1,300	\$900	\$450	\$450
470215	Cardiac Probe Grasper	Corresponding Da Vinci S/Si Material Number per Second Rebuttal Schedule 12.0 - 420215	\$1,300	\$900	\$450	\$450
470278	Graptor (Grasping Retractor)	Corresponding Da Vinci S/Si Material Number per Second Rebuttal Schedule 12.0 - 420278	\$1,300	\$900	\$450	\$450
470296	Large SutureCut™ Needle Driver	Corresponding Da Vinci S/Si Material Number per Second Rebuttal Schedule 12.0 - 420296	\$1,300	\$900	\$450	\$450
471296	Large SutureCut™ Needle Driver	Da Vinci X/Xi Instrument & Accessory Catalog October 2021	\$1,300	\$900	\$450	\$450
470309	Mega™ SutureCut™ Needle Driver	Corresponding Da Vinci S/Si Material Number per Second Rebuttal Schedule 12.0 - 420309	\$1,300	\$900	\$450	\$450
471309	Mega™ SutureCut™ Needle Driver	Da Vinci X/Xi Instrument & Accessory Catalog October 2021	\$1,300	\$900	\$450	\$450
470318	Small Graptor (Grasping Retractor)	Corresponding Da Vinci S/Si Material Number per Second Rebuttal Schedule 12.0 - 420318	\$1,300	\$900	\$450	\$450
470001	Potts Scissors	Corresponding Da Vinci S/Si Material Number per Second Rebuttal Schedule 12.0 - 420001	\$1,100	\$750	\$450	\$300
470007	Round Tip Scissors	Corresponding Da Vinci S/Si Material Number per Second Rebuttal Schedule 12.0 - 420007	\$1,100	\$750	\$450	\$300
470036	DeBakey Forceps	Corresponding Da Vinci S/Si Material Number per Second Rebuttal Schedule 12.0 - 420036	\$1,100	\$750	\$450	\$300

HIGHLY CONFIDENTIAL - ATTORNEYS' EYES ONLY

# SIS's EndoWrist Instrument Sales Prices and Costs (from Rebotix) - da Vinci X/Xi Second Rebuttal Schedule 12.1

Instrument Number	Description	Source of Identification	SIS sales price	SIS cost from Rebotix	Discount	SIS cost (net of volume discounts from Rebotix)
			[1]	[2]	[3]	[4]
470049	Cadiere Forceps	Corresponding Da Vinci S/Si Material Number per Second Rebuttal Schedule 12.0 - 470049	\$1,100	\$750	\$450	\$300
471049	Cadiere Forceps	Da Vinci X/Xi Instrument & Accessory Catalog October 2021	\$1,100	\$750	\$450	\$300
470178	Curved Scissors	Corresponding Da Vinci S/Si Material Number per Second Rebuttal Schedule 12.0 - 420178	\$1,100	\$750	\$450	\$300
470183	Permanent Cautery Hook	Corresponding Da Vinci S/Si Material Number per Second Rebuttal Schedule 12.0 - 420183	\$1,100	\$750	\$450	\$300
470184	Permanent Cautery Spatula	Corresponding Da Vinci S/Si Material Number per Second Rebuttal Schedule 12.0 - 420184	\$1,100	\$750	\$450	\$300
470189	Double Fenestrated Grasper	Corresponding Da Vinci S/Si Material Number per Second Rebuttal Schedule 12.0 - 420189	\$1,100	\$750	\$450	\$300
470192	Valve Hook	Corresponding Da Vinci S/Si Material Number per Second Rebuttal Schedule 12.0 - 420192	\$1,100	\$750	\$450	\$300
470230	Large Clip Applier	Corresponding Da Vinci S/Si Material Number per Second Rebuttal Schedule 12.0 - 420230	\$1,100	\$750	\$450	\$300
470327	Medium-Large Clip Applier	Corresponding Da Vinci S/Si Material Number per Second Rebuttal Schedule 12.0 - 420327	\$1,100	\$750	\$450	\$300

## NOTES / SOURCES:

Note: Per the Deposition of Grant Duque 25-36, 48-52 and 156-157 (November 8, 2022), I understand Intuitive's S/Si and X/Xi EndoWrist instruments are used for the same applications and essentially perform the same functions.

- [1] Per SIS000047-49, pricing was based on the da Vinci S/Si platform. I assume a similar price for the X/Xi platform. This appears reasonable, as per Second Rebuttal Schedules 13.1 and 13.2, the Intuitive average selling price for similar instrument numbers appear to be the approximately the same (i.e., 420179 and 470179). This would suggest the SIS price to its customers would be approximately the same.
- [2] Per REBOTIX162208-162212 at 212, pricing (cost) was based on the da Vinci S/Si platform. I assume a similar price (cost) for the X/Xi platform. This appears reasonable, as per Second Rebuttal Schedules 13.1 and 13.2, the Intuitive average selling price for similar instrument numbers appear to be the approximately the same (i.e., 420179 and 470179). This would suggest the price (cost) to SIS would be approximately the same.
- [3] In January 2020, a Memorandum of Understanding was drafted between SIS and Rebotix, which contained proposed pricing terms for Interceptor chips, including volume discounts up to \$450 per Interceptor chip at 300 units (Gibson Dep. Ex. 14) (*Rebotix Repair LLC v. Intuitive Surgical, Inc.*, No. 8:20-cv-02274-VMC-TGW (M.D. Fla. filed Sept. 28, 2020)). Per discussion with Chris Gibson and as described in my report, volume discounts for thousands of annual units would have been greater than \$450 per chip. For purposes of my analysis, I apply a \$450 discount herein.
- [4] = [2] - [3]

# SIS's EndoWrist Instrument Sale Price vs Intuitive Sales Price - da Vinci S/Si Second Rebuttal Schedule 12.2

[1]	[1]	[1]	[2]	[3]	[4]
Instrument Number	Description	SIS sales price	Intuitive sales price	Difference	% Discount
420179	Hot Shears (Monopolar Curved Scissors)	\$1,700	\$3,200	(\$1,500)	-47%
420110	PreCise Bipolar Forceps	\$1,600	\$2,708	(\$1,108)	-41%
420121	Fine Tissue Forceps	\$1,600	\$2,864	(\$1,264)	-44%
420171	Micro Bipolar Forceps	\$1,600	\$2,755	(\$1,155)	-42%
420172	Maryland Bipolar Forceps	\$1,600	\$2,705	(\$1,105)	-41%
420204	Atrial Retractor	\$1,600	\$2,964	(\$1,364)	-46%
420205	Fenestrated Bipolar Forceps	\$1,600	\$2,702	(\$1,102)	-41%
420227	PK® Dissecting Forceps	\$1,600	\$2,904	(\$1,304)	-45%
420246	Atrial Retractor Short Right	\$1,600	\$2,963	(\$1,363)	-46%
420249	Dual Blade Retractor	\$1,600	\$2,332	(\$732)	-31%
420344	Curved Bipolar Dissector	\$1,600	\$2,735	(\$1,135)	-41%
420003	Small Clip Applier	\$1,300	\$2,410	(\$1,110)	-46%
420006	Large Needle Driver	\$1,300	\$2,200	(\$900)	-41%
420033	Black Diamond Micro Forceps	\$1,300	\$2,519	(\$1,219)	-48%
420048	Long Tip Forceps	\$1,300	\$2,473	(\$1,173)	-47%
420093	ProGrasp Forceps	\$1,300	\$2,201	(\$901)	-41%
420157	Snap-fit™ Scalpel Instrument	\$1,300	\$3,011	(\$1,711)	-57%
420181	Resano Forceps	\$1,300	\$2,228	(\$928)	-42%
420190	Cobra Grasper	\$1,300	\$2,213	(\$913)	-41%
420194	Mega Needle Driver	\$1,300	\$2,201	(\$901)	-41%
420203	Pericardial Dissector	\$1,300	\$2,221	(\$921)	-41%
420207	Tenaculum Forceps	\$1,300	\$2,221	(\$921)	-41%

# SIS's EndoWrist Instrument Sale Price vs Intuitive Sales Price - da Vinci S/Si Second Rebuttal Schedule 12.2

[1]	[1]	[1]	[2]	[3]	[4]
Instrument Number	Description	SIS sales price	Intuitive sales price	Difference	% Discount
420215	Cardiac Probe Grasper	\$1,300	\$2,248	(\$948)	-42%
420278	Graptor (Grasping Retractor)	\$1,300	\$2,433	(\$1,133)	-47%
420296	Large SutureCut™ Needle Driver	\$1,300	\$2,402	(\$1,102)	-46%
420309	Mega™ SutureCut™ Needle Driver	\$1,300	\$2,405	(\$1,105)	-46%
420318	Small Graptor (Grasping Retractor)	\$1,300	\$2,115	(\$815)	-39%
420001	Potts Scissors	\$1,100	\$1,970	(\$870)	-44%
420007	Round Tip Scissors	\$1,100	\$1,980	(\$880)	-44%
420036	DeBakey Forceps	\$1,100	\$1,866	(\$766)	-41%
420049	Cadiere Forceps	\$1,100	\$2,005	(\$905)	-45%
420178	Curved Scissors	\$1,100	\$2,026	(\$926)	-46%
420183	Permanent Cautery Hook	\$1,100	\$2,008	(\$908)	-45%
420184	Permanent Cautery Spatula	\$1,100	\$2,014	(\$914)	-45%
420189	Double Fenestrated Grasper	\$1,100	\$2,014	(\$914)	-45%
420192	Valve Hook	\$1,100	\$1,799	(\$699)	-39%
420230	Large Clip Applier	\$1,100	\$1,408	(\$308)	-22%
420327	Medium-Large Clip Applier	\$1,100	\$1,410	(\$310)	-22%
<b>Average (simple)</b>					<b>-42%</b>

# SIS's EndoWrist Instrument Sale Price vs Intuitive Sales Price - da Vinci S/Si Second Rebuttal Schedule 12.2

[1]	[1]	[1]	[2]	[3]	[4]
Instrument Number	Description	SIS sales price	Intuitive sales price	Difference	% Discount

## NOTES / SOURCES:

[1] Per Second Rebuttal Schedule 12.0.

[2] Per Second Rebuttal Schedule 13.1.

[3] SIS sales price per [1] - [2]

[4] = [3] / [2]

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# Intuitive's EndoWrist Instrument Units, Net Sales Dollars and Average Selling Price by System: 2014 - June 2022

## Second Rebuttal Schedule 13.0

	2014	2015	2016	2017	2018	2019	2020	2021	2022 thru June	Total	%	2022 Annualized
<b>Units</b>												
[A] da Vinci S/Si												
[B] da Vinci X/Xi												
[C] Total units												
<b>Net sales dollars</b>												
[A] da Vinci S/Si												
[B] da Vinci X/Xi												
[C] Total net sales dollars												
<b>ASP per unit</b>												
[D] da Vinci S/Si	\$2,508	\$2,511	\$2,518	\$2,521	\$2,528	\$2,537	\$2,572	\$2,659	\$2,538	\$2,524		\$2,538
[D] da Vinci X/Xi	\$2,417	\$2,453	\$2,477	\$2,486	\$2,499	\$2,491	\$2,542	\$2,657	\$2,666	\$2,557		\$2,666
[D] Total ASP per unit	\$2,503	\$2,500	\$2,506	\$2,506	\$2,512	\$2,504	\$2,546	\$2,658	\$2,663	\$2,544		\$2,663

### NOTES / SOURCES:

Note: Any minor differences are due to rounding.

[A] Per Second Rebuttal Schedule 13.1.

[B] Per Second Rebuttal Schedule 13.2.

[C] = [A] + [B]

[D] Calculated based on the amounts herein.

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# Intuitive's EndoWrist Instrument Units and Net Sales Dollars by Product (Instrument Number) - da Vinci S/Si: 2014 - June 2022

## Second Rebuttal Schedule 13.1

	2014	2015	2016	2017	2018	2019	2020	2021	2022 thru Jun	Total	%
<b>Units</b>											
[A]											
[A]											
[A]											
[A]											
[A]											
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[A]											
[A]											
[A]											
[B] Total units											

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# **Intuitive's EndoWrist Instrument Units and Net Sales Dollars by Product (Instrument Number) - da Vinci S/Si: 2014 - June 2022**

## **Second Rebuttal Schedule 13.1**

2014	2015	2016	2017	2018	2019	2020	2021	2022	Total	%
								thru Jun		

## **Net sales dollars**

[B] Total net sales dollars

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# **Intuitive's EndoWrist Instrument Units and Net Sales Dollars by Product (Instrument Number) - da Vinci S/Si: 2014 - June 2022**

## **Second Rebuttal Schedule 13.1**

2014	2015	2016	2017	2018	2019	2020	2021	2022 thru Jun	Total	%
\$2,508	\$2,511	\$2,518	\$2,521	\$2,528	\$2,537	\$2,572	\$2,659	\$2,538	\$2,524	

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# Intuitive's EndoWrist Instrument Units and Net Sales Dollars by Product (Instrument Number) - da Vinci S/Si: 2014 - June 2022

## Second Rebuttal Schedule 13.1

2014	2015	2016	2017	2018	2019	2020	2021	2022 thru Jun	Total	%
------	------	------	------	------	------	------	------	------------------	-------	---

**NOTES / SOURCES:**

Note: Any minor differences are due to rounding.

Note: U.S. sales were identified by using the "Comp Code" field and filtering for "2000" and using the "Unit" field and filtering for "EA." Each S/Si instrument above was selected based on SIS000047-49 (see also, Second Rebuttal Schedule 12.0). Per REBOTIX162208-162212 at 212, I understand all of the S/Si EndoWrists identified above are repairable by Rebotix.

[A] Summarized per Intuitive-00595406-413, Intuitive-00595415-428, Intuitive-00595434-437, Intuitive-00695231-233, Intuitive-01101508 and Intuitive-02025757-759.

[B] Calculated based on the amounts herein.

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# **Intuitive's EndoWrist Instrument Units and Net Sales Dollars by Product (Instrument Number) - da Vinci X/Xi: 2014 - June 2022**

## **Second Rebuttal Schedule 13.2**

2014	2015	2016	2017	2018	2019	2020	2021	2022	Total	%
								thru June		

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# **Intuitive's EndoWrist Instrument Units and Net Sales Dollars by Product (Instrument Number) - da Vinci X/Xi: 2014 - June 2022**

## **Second Rebuttal Schedule 13.2**

2014	2015	2016	2017	2018	2019	2020	2021	2022	Total	%
								thru June		

## **Net sales dollars**

**[B] Total net sales dollars**

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# **Intuitive's EndoWrist Instrument Units and Net Sales Dollars by Product (Instrument Number) - da Vinci X/Xi: 2014 - June 2022**

## **Second Rebuttal Schedule 13.2**

2014	2015	2016	2017	2018	2019	2020	2021	2022	Total	%
\$2.417	\$2.453	\$2.477	\$2.486	\$2.499	\$2.491	\$2.542	\$2.657	\$2.666	\$2.557	
								thru June		

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# Intuitive's EndoWrist Instrument Units and Net Sales Dollars by Product (Instrument Number) - da Vinci X/Xi: 2014 - June 2022

## Second Rebuttal Schedule 13.2

2014	2015	2016	2017	2018	2019	2020	2021	2022	Total	%
									thru June	

**NOTES / SOURCES:**

Note: Any minor differences are due to rounding.

Note: U.S. sales were identified by using the "Comp Code" field and filtering for "2000" and using the "Unit" field and filtering for "EA." Each X/Xi instrument was selected as described on Second Rebuttal Schedule 12.1.

[A] Summarized per Intuitive-00595406-413, Intuitive-00595415-428, Intuitive-00595434-437, Intuitive-00695231-233, Intuitive-01101508 and Intuitive-02025757-759.

[B] Calculated based on the amounts herein.

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# SIS's EndoWrist Instrument Repair Summary

## Second Rebuttal Schedule 14.0

[1]	[1]	[1]	[1]	[1]	[2]	[1]	[1]	[1]	[1]	[3]	[3]	[3]	[3]	[3]
Order date	Customer	Invoice #	Quantity	Price	Sales	Item (EndoWrist Instrument Number)	Item description	Item comments	Total count	Repaired count	Not repaired count	Expired count	Not supported count	
11/14/18	ALEXIAN BROTHERS MEDICAL CTR	60576-1	1	\$0.00	N/A	470001	DaVinci Potts Scissors	Severely damaged. BEYOND REPAIR. Needs replacement	1	1	1			
06/28/19	LEGACY GOOD SAMARITAN	61059-1	1	\$1,300.00	\$1,300.00	420309	Needle Driver, Mega Suture Cut	Refurbish tool end. Clean. Mechanical inspection and testing. Electrical safety testing. Use count reset and test all functions	2	1				
07/18/19	LEGACY GOOD SAMARITAN	61064-1	1	\$1,300.00	\$1,300.00	420309	Needle Driver, Mega Suture Cut	Refurbish tool end. Clean. Mechanical inspection and testing. Electrical safety testing. Use count reset and test all functions	3	2				
08/27/19	KAISER FONTANA	95513-1	1	\$1,700.00	\$0.00	420179	Monopolar Curved Scissors	Monopolar Curved Scissors EndoWrist Repair Services	4	3				
08/27/19	KAISER FONTANA	95513-1	1	\$1,600.00	\$0.00	420205	Fenestrated Bipolar Forceps	Fenestrated Bipolar Forceps EndoWrist Repair Services	5	4				
08/27/19	KAISER FONTANA	95513-1	1	\$1,300.00	\$0.00	420093	ProGrasp Forceps	ProGrasp Forceps EndoWrist Repair Services	6	5				
08/27/19	KAISER FONTANA	95513-1	1	\$1,300.00	\$0.00	420194	Mega Needle Driver	Mega Needle Driver EndoWrist Repair Services	7	6				
09/09/19	KAISER FONTANA	60733-1	1	\$1,300.00	\$1,300.00	420318	Small Grapto (Grasping Retractor)	Refurbish tool end. Clean. Mechanical inspection and testing. Electrical safety testing. Use count reset and test all functions	8	7				
09/09/19	KAISER FONTANA	60733-1	1	\$1,300.00	\$1,300.00	420006	Needle Driver, Large	Refurbish tool end. Clean. Mechanical inspection and testing. Electrical safety testing. Use count reset and test all functions	9	8				
09/09/19	KAISER FONTANA	60733-1	1	\$1,300.00	\$1,300.00	420093	Forceps, ProGrasp	Refurbish tool end. Clean. Mechanical inspection and testing. Electrical safety testing. Use count reset and test all functions	10	9				
09/09/19	KAISER FONTANA	60733-1	1	\$1,300.00	\$1,300.00	420318	Small Grapto (Grasping Retractor)	Refurbish tool end. Clean. Mechanical inspection and testing. Electrical safety testing. Use count reset and test all functions	11	10				
09/09/19	KAISER FONTANA	60733-1	1	\$1,100.00	\$1,100.00	420049	Forceps, Cadiere	Refurbish tool end. Clean. Mechanical inspection and testing. Electrical safety testing. Use count reset and test all functions	12	11				
09/09/19	KAISER FONTANA	60733-2	1	\$0.00	N/A	420172	Bipolar Forceps, Maryland	BEYOND REPAIR. Needs replacement	13		2			
09/09/19	KAISER FONTANA	60733-2	1	\$0.00	N/A	420172	Bipolar Forceps, Maryland	BEYOND REPAIR. Needs replacement	14		3			
09/09/19	KAISER FONTANA	60733-2	1	\$0.00	N/A	420172	Bipolar Forceps, Maryland	BEYOND REPAIR. Needs replacement	15		4			
	ADVOCATE GOOD SAMARITAN	95713-1	1	\$0.00	N/A	420205	Fenestrated Bipolar Forceps	Expired. BEYOND REPAIR. SIS is unable to provide a replacement	16		1			
10/29/19	MARIN HEALTH MEDICAL CENTER	90009-1	1	\$1,300.00	\$1,300.00	420296	Needle Driver, Large Suture Cut	Refurbish tool end. Clean. Mechanical inspection and testing. Electrical safety testing. Use count reset and test all functions	17	12				
10/29/19	MARIN HEALTH MEDICAL CENTER	90009-1	1	\$1,300.00	\$1,300.00	420194	Needle Driver, Mega	Refurbish tool end. Clean. Mechanical inspection and testing. Electrical safety testing. Use count reset and test all functions	18	13				
10/29/19	MARIN HEALTH MEDICAL CENTER	90009-1	1	\$1,100.00	\$1,100.00	420036	Forceps, DeBakey	Refurbish tool end. Clean. Mechanical inspection and testing. Electrical safety testing. Use count reset and test all functions	19	14				
10/29/19	MARIN HEALTH MEDICAL CENTER	90009-1	1	\$1,600.00	\$1,600.00	420172	Bipolar Forceps, Maryland	Refurbish tool end. Clean. Mechanical inspection and testing. Electrical safety testing. Use count reset and test all functions	20	15				
10/29/19	MARIN HEALTH MEDICAL CENTER	90009-1	1	\$1,300.00	\$1,300.00	420194	Needle Driver, Mega	Refurbish tool end. Clean. Mechanical inspection and testing. Electrical safety testing. Use count reset and test all functions	21	16				
10/30/19	ADVOCATE SOUTH SUBURBAN HOSP	61148-1	1	\$1,600.00	\$1,600.00	420205	Fenestrated Bipolar Forceps	Repair/Exchange. Received SN: N10190207	22	17				
10/30/19	ADVOCATE SOUTH SUBURBAN HOSP	61148-2	1	\$1,600.00	\$1,600.00	420227	PK® Dissecting Forceps	Refurbish tool end. Clean. Mechanical inspection and testing. Electrical safety testing. Use count reset and test all functions	23	18				
10/30/19	ADVOCATE SOUTH SUBURBAN HOSP	61148-3	1	\$1,300.00	\$1,300.00	420093	Forceps, ProGrasp	Refurbish tool end. Clean. Mechanical inspection and testing. Electrical safety testing. Use count reset and test all functions	24	19				
10/30/19	ADVOCATE SOUTH SUBURBAN HOSP	61148-4	1	\$1,300.00	\$1,300.00	420093	Forceps, ProGrasp	Refurbish tool end. Clean. Mechanical inspection and testing. Electrical safety testing. Use count reset and test all functions	25	20				
10/30/19	ADVOCATE SOUTH SUBURBAN HOSP	61148-5	1	\$1,300.00	\$1,300.00	420006	Needle Driver, Large	Repair/Exchange. Received SN: N10190327	26	21				
10/30/19	ADVOCATE SOUTH SUBURBAN HOSP	61148-6	1	\$1,100.00	\$1,100.00	420049	Forceps, Cadiere	Refurbish tool end. Clean. Mechanical inspection and testing. Electrical safety testing. Use count reset and test all functions	27	22				
10/30/19	ADVOCATE SOUTH SUBURBAN HOSP	61148-7	1	\$1,300.00	\$1,300.00	420093	Forceps, ProGrasp	Refurbish tool end. Clean. Mechanical inspection and testing. Electrical safety testing. Use count reset and test all functions	28	23				
10/29/19	ADVOCATE SOUTH SUBURBAN HOSP	61148-8	1	\$0.00	N/A	420049	Forceps, Cadiere	Expired and disposed of. BEYOND REPAIR. SIS is unable to provide a replacement	29		2			
11/06/19	ADVOCATE SOUTH SUBURBAN HOSP	61156-1	1	\$1,300.00	\$1,300.00	420006	Needle Driver, Large	Refurbish tool end. Clean. Mechanical inspection and testing. Electrical safety testing. Use count reset and test all functions	30	24				
11/06/19	ADVOCATE SOUTH SUBURBAN HOSP	61156-2	1	\$1,300.00	\$1,300.00	420006	Needle Driver, Large	Refurbish tool end. Clean. Mechanical inspection and testing. Electrical safety testing. Use count reset and test all functions	31	25				
11/14/19	MARIN HEALTH MEDICAL CENTER	60137-1	1	\$1,300.00	\$1,300.00	420296	Needle Driver, Large Suture Cut	Refurbish tool end. Clean. Mechanical inspection and testing. Electrical safety testing. Use count reset and test all functions	32	26				
11/14/19	MARIN HEALTH MEDICAL CENTER	60137-1	1	\$1,100.00	\$1,100.00	420049	Forceps, Cadiere	Refurbish tool end. Clean. Mechanical inspection and testing. Electrical safety testing. Use count reset and test all functions	33	27				
11/15/19	MARIN HEALTH MEDICAL CENTER	90008-1	1	\$1,700.00	N/A	420179	Scissors, Curved Monopolar	Repair/Exchange. Received SN: N12190701	34	28				
11/15/19	MARIN HEALTH MEDICAL CENTER	90008-1	1	\$1,300.00	N/A	420309	Needle Driver, Mega Suture Cut	Refurbish tool end. Clean. Mechanical inspection and testing. Electrical safety testing. Use count reset and test all functions	35	29				
11/15/19	MARIN HEALTH MEDICAL CENTER	90008-1	1	\$1,700.00	N/A	420179	Scissors, Curved Monopolar	Refurbish tool end. Clean. Mechanical inspection and testing. Electrical safety testing. Use count reset and test all functions	36	30				

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# SIS's EndoWrist Instrument Repair Summary

## Second Rebuttal Schedule 14.0

[1]	[1]	[1]	[1]	[1]	[2]	[1]	[1]	[1]	[1]	[1]	[3]	[3]	[3]	[3]	[3]
Order date	Customer	Invoice #	Quantity	Price	Sales	Item (EndoWrist Instrument Number)	Item description		Item comments	Total count	Repaired count	Not repaired count	Expired count	Not supported count	
11/15/19	MARIN HEALTH MEDICAL CENTER	90008-1	1	\$1,100.00	N/A	420049	Forceps, Cadiere		Repair/Exchange. Received SN: N10180822	37	31				
11/15/19	MARIN HEALTH MEDICAL CENTER	90008-1	1	\$1,100.00	N/A	420230	Applier, Large Clip		Refurbish tool end. Clean. Mechanical inspection and testing. Electrical safety testing. Use count reset and test all functions.	38	32				
11/15/19	MARIN HEALTH MEDICAL CENTER	90008-1	1	\$1,600.00	N/A	420172	Bipolar Forceps, Maryland		Refurbish tool end. Clean. Mechanical inspection and testing. Electrical safety testing. Use count reset and test all functions.	39	33				
11/15/19	MARIN HEALTH MEDICAL CENTER	90008-1	1	\$1,100.00	N/A	420230	Applier, Large Clip		Repair/Exchange. Received SN: N10170921	40	34				
11/15/19	MARIN HEALTH MEDICAL CENTER	90008-1	1	\$1,300.00	N/A	420194	Needle Driver, Mega		Repair/Exchange. Received SN: M10140121	41	35				
11/15/19	MARIN HEALTH MEDICAL CENTER	90008-1	1	\$0.00	N/A	420275	Shears, Harmonic Ace Curved		Model number is not supported. NO REPAIR	42				1	
	ADVOCATE GOOD SAMARITAN	96156-1	1	\$1,300.00	N/A	420006	Needle Driver, Large		Refurbish tool end. Clean. Mechanical inspection and testing. Electrical safety testing. Use count reset and test all functions.	43	36				
12/10/19	MARIN HEALTH MEDICAL CENTER	90010-1	1	\$1,100.00	\$1,100.00	420230	Applier, Large Clip		Refurbish tool end. Clean. Mechanical inspection and testing. Electrical safety testing. Use count reset and test all functions.	44	37				
12/10/19	MARIN HEALTH MEDICAL CENTER	90010-1	1	\$1,300.00	\$1,300.00	420207	Forceps, Tenaculum		Electrical safety testing. Use count reset and test all functions.	45	38				
12/10/19	MARIN HEALTH MEDICAL CENTER	90010-1	1	\$1,600.00	\$1,600.00	420172	Bipolar Forceps, Maryland		Repair/Exchange. Received SN: M10100316	46	39				
12/10/19	MARIN HEALTH MEDICAL CENTER	90010-1	1	\$1,600.00	\$1,600.00	420172	Bipolar Forceps, Maryland		Refurbish tool end. Clean. Mechanical inspection and testing. Electrical safety testing. Use count reset and test all functions.	47	40				
12/10/19	MARIN HEALTH MEDICAL CENTER	90010-1	1	\$1,700.00	\$1,700.00	420179	Scissors, Curved Monopolar		Refurbish tool end. Clean. Mechanical inspection and testing. Electrical safety testing. Use count reset and test all functions.	48	41				
12/10/19	MARIN HEALTH MEDICAL CENTER	90010-1	1	\$1,600.00	\$1,600.00	420205	Fenestrated Bipolar Forceps		Refurbish tool end. Clean. Mechanical inspection and testing. Electrical safety testing. Use count reset and test all functions.	49	42				
<b>\$38,900.00</b>															
										<b>Total</b>	<b>49</b>	<b>42</b>	<b>4</b>	<b>2</b>	<b>1</b>
										<b>[A] Repair yield of SIS collectable units</b>		<b>88%</b>			

**NOTES / SOURCES:**

Note: Any minor differences are due to rounding.

Note: Column headings are based on a review of invoices, for example, SIS000097-112.

[1] Summarized per SIS000167.

[2] Summarized per SIS000097-112. I have indicated "N/A" for records where invoices could not be located.

[3] Count based on "Item Comments."

[A] Calculated as Repaired Count / (Repaired Count + Not Repaired Count + Expired Count).

# SIS's Financial Statements: 2019 - October 2021

## Second Rebuttal Schedule 15.0

	[1]		[2]		[3]	
	2019		2020		2021 (thru Oct)	
	Amount	%	Amount	%	Amount	%
Revenue	\$6,996,108	100.0%	\$10,723,980	100.0%	\$10,092,079	100.0%
Cost of goods sold	\$4,084,286	58.4%	\$5,863,755	54.7%	\$5,813,610	57.6%
Gross profit	\$2,911,822	41.6%	\$4,860,225	45.3%	\$4,278,469	42.4%
Expenses:						
Selling	\$1,415,642	20.2%	\$1,893,403	17.7%	\$1,899,002	18.8%
General and admin	\$1,125,420	16.1%	\$1,224,361	11.4%	\$1,428,002	14.1%
Total expenses	\$2,541,062	36.3%	\$3,117,764	29.1%	\$3,327,004	33.0%
Operating income	\$370,760	5.3%	\$1,742,461	16.2%	\$951,465	9.4%
Other income and (expense)	(\$2,175)	0.0%	\$571,623	5.3%	\$1,208	0.0%
<b>Profit before taxes</b>	<b>\$368,585</b>	<b>5.3%</b>	<b>\$2,314,084</b>	<b>21.6%</b>	<b>\$952,673</b>	<b>9.4%</b>

### NOTES / SOURCES:

Note: Any minor differences are due to rounding.

[1] Per SIS320176-188 at 176.

[2] Per SIS320922-935 at 922.

[3] Per SIS327629-636 at 629. Note: Per discussions with Greg Posdal, SIS's 2021 sales approximated \$12.4 million.

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# SIS's Detailed SGA: 2019 - October 2021

## Second Rebuttal Schedule 15.1

	[1]		[2]		[3]		[4]		[4]	[4]	
	2019		2020		2021 (thru Oct)		Total		Fixed / Variable	Variable as a % of revenue	Notes
	Amount	%	Amount	%	Amount	%	Amount	%			
Revenue	\$6,996,108	100.00%	\$10,723,980	100.00%	\$10,092,079	100.00%	\$27,812,167	100.00%			
Cost of goods sold	\$4,084,286	58.38%	\$5,863,755	54.68%	\$5,813,610	57.61%	\$15,761,651	56.67%			
Gross profit	\$2,911,822	41.62%	\$4,860,225	45.32%	\$4,278,469	42.39%	\$12,050,516	43.33%			
Expenses:											
<u><b>Selling:</b></u>											
Wages - Sales	\$611,469	8.74%	\$732,356	6.83%	\$688,552	6.82%	\$2,032,377	7.31%	Partially variable	2.00% Currently have approximately 10-12 Associate Sales Representatives ("ASRs") managing more than 1 million annual repair units, which approximates 80,000-100,000 repair units per ASR. According to discussion with Greg Posdal, SIS would potentially add up to as many as 10 additional ASRs to sell both EndoWrist repairs and other SIS products/services. New ASRs cost approximately \$50,000 in wages annually. Ten ASRs would approximate \$500,000 in wages per year, which represents less than 1% of the maximum annual lost EndoWrist repair revenue of approximately \$68.5 million as shown on Second Rebuttal Schedule 2.0. In addition, SIS pays a 1% commission for each EndoWrist sale. For purposes of my analysis, I use 2% as variable.	
Depreciation	\$99,593	1.42%	\$138,413	1.29%	\$186,331	1.85%	\$424,337	1.53%	Fixed	Consists of depreciation for larger equipment, machining center, loaner inventory, vehicles and on-site repair vans.	
Rent	\$132,070	1.89%	\$138,389	1.29%	\$125,989	1.25%	\$396,448	1.43%	Fixed	No need for additional space for EndoWrist repairs.	
Insurance Group	\$110,040	1.57%	\$151,624	1.41%	\$123,787	1.23%	\$385,451	1.39%	Partially variable	1.39% Consists of employee health insurance premiums. For purposes of my analysis, I treat this as variable.	
Professional Fees	\$76,345	1.09%	\$101,522	0.95%	\$134,047	1.33%	\$311,914	1.12%	Fixed	Consists of attorney and accountant fees and one off fees for consultant and training.	
Insurance	\$61,858	0.88%	\$87,102	0.81%	\$86,377	0.86%	\$235,337	0.85%	Partially variable	0.85% Consists of life insurance, workers comp, general liability insurance premiums. For purposes of my analysis, I treat this as variable.	
Outside Services	\$40,858	0.58%	\$80,989	0.76%	\$90,703	0.90%	\$212,550	0.76%	Fixed	Consists of IT support and temporary employee labor fees.	
Sales - Bonus	0.00%		\$100,000	0.93%	\$87,386	0.87%	\$187,386	0.67%	Variable	0.67%	
Operating Supplies	\$28,480	0.41%	\$86,029	0.80%	\$62,804	0.62%	\$177,313	0.64%	Variable	0.64% Consists of non-inventory production, lab supplies and small tools.	
Maintenance & Repair	\$33,229	0.47%	\$69,539	0.65%	\$47,595	0.47%	\$150,363	0.54%	Fixed	Fire prevention, janitorial cleaning, small repairs, lawn service and HVAC.	
Office Expense	\$50,009	0.71%	\$59,239	0.55%	\$27,090	0.27%	\$136,338	0.49%	Partially variable	0.49% For purposes of my analysis, I treat this as variable.	
Real Estate Taxes	\$40,773	0.58%	\$45,735	0.43%	\$41,176	0.41%	\$127,684	0.46%	Fixed	SIS would not require additional space.	
Entertainment	\$47,255	0.68%	\$40,153	0.37%	\$32,022	0.32%	\$119,430	0.43%	Variable	0.43%	
Payroll Fees	\$10,525	0.15%	\$17,306	0.16%	\$56,617	0.56%	\$84,448	0.30%	Variable	0.05% Calculated as (0.30% Payroll Fees / (7.31% Wages - Sales + 0.67% Sales - Bonus + 4.10% Salaries/Employees + 2.65% Salaries/Officers + 0.10% Salaries Office AZ ) *(2.00% Wages - Sales + 0.20% Salaries/Employees) as I understand this relates to selling, general and administrative wages and bonuses paid.	
Interest Expense	\$34,572	0.49%	\$19,034	0.18%	\$9,679	0.10%	\$63,285	0.23%	Fixed	Consists of interest on the line of credit which would potentially decrease.	
Sales & Marketing	\$1,827	0.03%	\$325	0.00%	\$45,346	0.45%	\$47,498	0.17%	Variable	0.17%	
Dues & Subscriptions	\$16,747	0.24%	\$7,796	0.07%	\$7,387	0.07%	\$31,930	0.11%	Fixed		
Printing & Advertise	\$5,572	0.08%	\$6,252	0.06%	\$10,994	0.11%	\$22,818	0.08%	Variable	0.08%	
Meals	0.00%		0.00%		\$22,469	0.22%	\$22,469	0.08%	Variable	0.08%	
Misc Expense	0.00%		\$5,000	0.05%	\$6,903	0.07%	\$11,903	0.04%	Variable	0.04%	
Licenses & Permits	\$6,550	0.09%	\$2,562	0.02%	\$511	0.01%	\$9,623	0.03%	Fixed		
Promotional & Gifts	\$1,948	0.03%	\$1,098	0.01%	\$3,286	0.03%	\$6,332	0.02%	Variable	0.02%	
Postage	\$2,278	0.03%	\$1,613	0.02%	\$1,878	0.02%	\$5,769	0.02%	Variable	0.02%	
Amortization	\$3,644	0.05%	\$1,302	0.01%	0.00%		\$4,946	0.02%	Fixed		
Professional Mktg Fees	0.00%		\$25	0.00%	\$73	0.00%	\$98	0.00%	Fixed		
<b>Total selling</b>	<b>\$1,415,642</b>	<b>20.23%</b>	<b>\$1,893,403</b>	<b>17.66%</b>	<b>\$1,899,002</b>	<b>18.82%</b>	<b>\$5,208,047</b>	<b>18.73%</b>		<b>6.93%</b>	

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# SIS's Detailed SGA: 2019 - October 2021

## Second Rebuttal Schedule 15.1

	[1]		[2]		[3]		[4]		[4]		[4] Notes
	2019		2020		2021 (thru Oct)		Total		Fixed / Variable	Variable as a % of revenue	
	Amount	%	Amount	%	Amount	%	Amount	%			
<b>General and admin:</b>											
Salaries/Employees	\$267,488	3.82%	\$356,501	3.32%	\$516,607	5.12%	\$1,140,596	4.10%	Essentially fixed	0.20% Consists of IT, HR/Payroll, Recruiting, Accounting, COO and Account Managers. If SIS added approximately 2 Account Managers at approximately \$50,000 each, or \$100,000 in total wages, this would approximate 0.15% of the maximum annual lost EndoWrist repair revenue of approximately \$68.5 million as shown on Second Rebuttal Schedule 2.0. For purposes of my analysis, I use 0.20% as variable.	
Payroll Tax FICA	\$192,098	2.75%	\$272,758	2.54%	\$273,616	2.71%	\$738,472	2.66%	Variable	0.40% Calculated as (2.66% Payroll Tax FICA / (7.31% Wages - Sales + 0.67% Sales - Bonus + 4.10% Salaries/Employees + 2.65% Salaries/Officers + 0.10% Salaries Office AZ ) *(2.00% Wages - Sales + 0.20% Salaries/Employees) as I understand this relates to all selling, general and administrative wages and bonuses paid.	
Salaries/Officers	\$254,886	3.64%	\$291,238	2.72%	\$190,923	1.89%	\$737,047	2.65%	Fixed		
Travel	\$234,380	3.35%	\$173,676	1.62%	\$248,886	2.47%	\$656,942	2.36%	Partially variable	1.00% Large portion of current expenses is related to technical assistance or educational travel. For purposes of my analysis, treat this as variable.	
Telephone	\$30,596	0.44%	\$38,251	0.36%	\$31,391	0.31%	\$100,238	0.36%	Fixed		
Seminars/Conferences	\$49,859	0.71%	\$10,400	0.10%	\$23,376	0.23%	\$83,635	0.30%	Fixed		
Payroll Tax - Other	\$18,828	0.27%	\$24,850	0.23%	\$33,876	0.34%	\$77,554	0.28%	Variable	0.04% Calculated as (0.28% Payroll Tax - Other / (7.31% Wages - Sales + 0.67% Sales - Bonus + 4.10% Salaries/Employees + 2.65% Salaries/Officers + 0.10% Salaries Office AZ ) *(2.00% Wages - Sales + 0.20% Salaries/Employees) as I understand this relates to selling, general and administrative wages and bonuses paid.	
Utilities	\$24,226	0.35%	\$22,605	0.21%	\$26,145	0.26%	\$72,976	0.26%	Fixed	0.26% For purposes of my analysis, I treat this as variable.	
Bad Debts	\$23,805	0.34%	\$20,000	0.19%	\$2,164	0.02%	\$45,969	0.17%	Fixed		
Employee Recruitment	\$6,892	0.10%	\$5,287	0.05%	\$24,267	0.24%	\$36,446	0.13%	Variable	0.13%	
Moving Expense	\$8,590	0.12%			\$19,669	0.19%	\$28,259	0.10%	Fixed		
Salaries Office AZ		0.00%			\$26,428	0.26%	\$26,428	0.10%	Fixed	Represents one employee.	
Medical Reimburse	\$5,120	0.07%	\$1,569	0.01%	\$7,107	0.07%	\$13,796	0.05%	Fixed		
Credit Card Fees	\$5,249	0.08%	\$5,247	0.05%	\$3,168	0.03%	\$13,664	0.05%	Fixed		
Vehicle	\$2,853	0.04%			(\$453)	0.00%	\$2,400	0.01%	Fixed		
Bank Charges	\$777	0.01%	\$470	0.00%	\$825	0.01%	\$2,072	0.01%	Fixed		
Sales Tax	(\$227)	0.00%	\$1,509	0.01%	\$7	0.00%	\$1,289	0.00%	Fixed		
<b>Sub-total G&amp;A expenses</b>	<b>\$1,125,420</b>	<b>16.09%</b>	<b>\$1,224,361</b>	<b>11.42%</b>	<b>\$1,428,002</b>	<b>14.15%</b>	<b>\$3,777,783</b>	<b>13.58%</b>		<b>2.03%</b>	
<b>Total expenses</b>	<b>\$2,541,062</b>	<b>36.32%</b>	<b>\$3,117,764</b>	<b>29.07%</b>	<b>\$3,327,004</b>	<b>32.97%</b>	<b>\$8,985,830</b>	<b>32.31%</b>		<b>8.96%</b>	
								Rounded to		<b>9.00%</b>	

**NOTES / SOURCES:**

Note: Any minor differences are due to rounding.

[1] Per SIS320176-188 at 176.

[2] Per SIS320922-935 at 922.

[3] Per SIS327629-636 at 629. Note: Per discussions with Greg Posdal, SIS's 2021 sales approximated \$12.4 million.

[4] Per discussions with Greg Posdal.

# Intuitive EndoWrist Instrument Average Selling Price, Units and Net Sales Dollars: 2020 - 2025 Second Rebuttal Schedule 16.0

	2020	2021	2022	2023	2024	2025	Total
<b>ASP per unit</b>							
[A] da Vinci S/Si	\$2,572	\$2,659	\$2,538	\$2,538	\$2,538	\$2,538	\$2,588
[A] da Vinci X/Xi	\$2,542	\$2,657	\$2,666	\$2,666	\$2,666	\$2,666	\$2,649
[A] Total ASP per unit	\$2,546	\$2,658	\$2,663	\$2,663	\$2,663	\$2,663	\$2,646
<b>Units</b>							
[B] da Vinci S/Si			3,839	1,928	1,077	90,439	
[B] da Vinci X/Xi			422,719	455,982	437,186	2,327,724	
[B] Total units			426,558	457,910	438,263	2,418,163	
<b>Net sales dollars</b>							
[C] da Vinci S/Si			\$9,743,382	\$4,893,264	\$2,733,426	\$234,046,893	
[C] da Vinci X/Xi			\$1,126,968,854	\$1,215,648,012	\$1,165,537,876	\$6,165,398,677	
[C] Total net sales dollars			\$1,136,712,236	\$1,220,541,276	\$1,168,271,302	\$6,399,445,570	

## NOTES / SOURCES:

Note: Any minor differences are due to rounding.

[A] Per Second Rebuttal Schedule 13.0. ASP per unit after June 2022 is based on Intuitive ASP through June 2022. Total ASP is calculated based on the amounts herein.

[B] Per Second Rebuttal Schedule 6.0.

[C] = [A] \* [B]

# Lanham Act Based on Scenario 2 - Unenforceable Contracts (2 Year X/Xi Delay): 2020 - 2025 Second Rebuttal Schedule 16.1

	2020	2021	2022	2023	2024	2025	Total
<b>Intuitive's ASP per unit</b>							
[A] da Vinci S/Si	\$2,572	\$2,659	\$2,538	\$2,538	\$2,538	\$2,538	\$2,594
[A] da Vinci X/Xi	\$2,542	\$2,657	\$2,666	\$2,666	\$2,666	\$2,666	\$2,666
<b>Lost EndoWrist repair units</b>							
[B] da Vinci S/Si	1,273	1,796	921	431	170	35	4,626
[B] da Vinci X/Xi	0	0	8,779	33,862	40,179	14,008	96,828
[B] Total units	1,273	1,796	9,700	34,293	40,349	14,043	101,454
<b>Net sales dollars (undiscounted)</b>							
[C] da Vinci S/Si	\$3,274,156	\$4,775,564	\$2,337,498	\$1,093,878	\$431,460	\$88,830	\$12,001,386
[C] da Vinci X/Xi	\$0	\$0	\$23,404,814	\$90,276,092	\$107,117,214	\$37,345,328	\$258,143,448
[C] Total net sales dollars	\$3,274,156	\$4,775,564	\$25,742,312	\$91,369,970	\$107,548,674	\$37,434,158	\$270,144,834
[D] Discount %					12%	12%	
[E] Discount period					0.5	1.5	
[F] Discount factor	1.00000	1.00000	1.00000	1.00000	0.94491	0.84367	
[G] Discounted net sales dollars	\$3,274,156	\$4,775,564	\$25,742,312	\$91,369,970	\$101,623,818	\$31,582,076	\$258,367,896

# Lanham Act Based on Scenario 2 - Unenforceable Contracts (2 Year X/Xi Delay): 2020 - 2025 Second Rebuttal Schedule 16.1

## NOTES / SOURCES:

Note: Any minor differences are due to rounding.

[A] Per Second Rebuttal Schedule 13.0. ASP per unit after June 2022 is based on Intuitive ASP through June 2022. Total ASP is calculated based on the amounts herein.

[B] Per Second Rebuttal Schedule 4.2.

[C] = [A] \* [B]

[D] For the GICS 35101010, Health Care Equipment & Supplies, Duff and Phelps - Cost of Capital Composite, September 30, 2022, the average SIC/GICS Composite WACC (weighted average cost of capital) is 9.2% and median WACC is 8.9%. For the small composite, the WACC is 11.1% to 11.2% (CRSP Decile). For purposes of my analysis I use 12%, which is conservative. Note: The projections after 2022 do not include growth, therefore the discount rate would likely be less.

[E] Calculated using the mid-year convention to January 1, 2024, the approximate date of trial.

[F] =  $(1 + [H])^{[I]}$ , rounded to 5 decimals.

[G] = Net sales dollars (undiscounted) per [C] \* [F]

# Lanham Act Based on Scenario 2 - Unenforceable Contracts (1 Year X/Xi Delay): 2020 - 2025 Second Rebuttal Schedule 16.2

	2020	2021	2022	2023	2024	2025	Total
<b>Intuitive's ASP per unit</b>							
[A] da Vinci S/Si	\$2,572	\$2,659	\$2,538	\$2,538	\$2,538	\$2,538	\$2,594
[A] da Vinci X/Xi	\$2,542	\$2,657	\$2,666	\$2,666	\$2,666	\$2,666	\$2,665
<b>Lost EndoWrist repair units</b>							
[B] da Vinci S/Si	1,273	1,796	921	431	170	35	4,626
[B] da Vinci X/Xi	0	8,329	29,263	47,407	40,179	14,008	139,186
[B] Total units	1,273	10,125	30,184	47,838	40,349	14,043	143,812
<b>Net sales dollars (undiscounted)</b>							
[C] da Vinci S/Si	\$3,274,156	\$4,775,564	\$2,337,498	\$1,093,878	\$431,460	\$88,830	\$12,001,386
[C] da Vinci X/Xi	\$0	\$22,130,153	\$78,015,158	\$126,387,062	\$107,117,214	\$37,345,328	\$370,994,915
[C] Total net sales dollars	\$3,274,156	\$26,905,717	\$80,352,656	\$127,480,940	\$107,548,674	\$37,434,158	\$382,996,301
[D] Discount %					12%	12%	
[E] Discount period					0.5	1.5	
[F] Discount factor	1.00000	1.00000	1.00000	1.00000	0.94491	0.84367	
[G] Discounted net sales dollars	\$3,274,156	\$26,905,717	\$80,352,656	\$127,480,940	\$101,623,818	\$31,582,076	\$371,219,363

# Lanham Act Based on Scenario 2 - Unenforceable Contracts (1 Year X/Xi Delay): 2020 - 2025 Second Rebuttal Schedule 16.2

## NOTES / SOURCES:

Note: Any minor differences are due to rounding.

[A] Per Second Rebuttal Schedule 13.0. ASP per unit after June 2022 is based on Intuitive ASP through June 2022. Total ASP is calculated based on the amounts herein.

[B] Per Second Rebuttal Schedule 4.5.

[C] = [A] \* [B]

[D] For the GICS 35101010, Health Care Equipment & Supplies, Duff and Phelps - Cost of Capital Composite, September 30, 2022, the average SIC/GICS Composite WACC (weighted average cost of capital) is 9.2% and median WACC is 8.9%. For the small composite, the WACC is 11.1% to 11.2% (CRSP Decile). For purposes of my analysis I use 12%, which is conservative. Note: The projections after 2022 do not include growth, therefore the discount rate would likely be less.

[E] Calculated using the mid-year convention to January 1, 2024, the approximate date of trial.

[F] =  $(1 + [H])^{1/5} - [I]$ , rounded to 5 decimals.

[G] = Net sales dollars (undiscounted) per [C] \* [F]